THE

Law and Customs

OF THE

STOCK EXCHANGE.

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STOCK EXCHANGE,

WITH

AN APPENDIX

CONTAINING THE

RULES AND REGULATIONS AUTHORIZED BY THE COMMITTEE FOR THE CONDUCT OF BUSINESS,

BY

RUDOLPH E. MELSHEIMER,

Inner Temple, Barrister-at-Law,

AND

WALTER LAURENCE,

Late of the Stock Exchange.

Second Edition

BY

RUDOLPH E. MELSHEIMER,

Of the Inner Temple,

AND

SAMUEL GARDNER,

Of the Stock Exchange.

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PREFACE

TO THE SECOND EDITION.

SINCE the First Edition of this work was published, the lamented death of Mr. WALTER LAURENCE has caused a change in the editorship. His place has been filled by his friend and partner, Mr. SAMUEL GARDNER, and the original text has undergone considerable amendment and enlargement.

The scope of the work is still confined to a description of the various steps in the transaction by means of which an order given by a principal to his broker is carried out on the Stock Exchange, and a discussion of the legal relationship of the parties at each stage of this transaction. It has not seemed desirable to go further, or to enter upon any questions as to the subsequent rights of the parties as bondholders or owners of shares in companies, because this has already formed the subject of treatises by the able authors of the Law

of Companies, of Partnership, and of Shares, to which the reader is referred.

The Rules of the Stock Exchange, as at present in force, will be found set out in extenso in the Appendix, and reference has been made to them in the Index, under the same headings, as far as possible, as in the authorized edition. They are, however, under constant revision at the hands of the Committee, and therefore reliance should only be placed on the last edition issued by them.

The Editors take this opportunity of expressing their obligation to those members and officials of the Stock Exchange who have rendered assistance in revising the work, and have much pleasure in acknowledging the courtesy and readiness to help they have invariably met with.

R. E. M.
S. G.

2, Plowden Buildings, Temple,
October, 1884.

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CHAPTER I.

THE STOCK EXCHANGE.

Origin and objects.

THE origin of the Stock Exchange, and the objects of that institution, are described by Mr. Francis Levien, the Secretary to the Committee for General Purposes, in a Memorandum submitted by him to the Royal Commission of 1877, in the following words, which we have his permission to quote at length. He there states that the earliest minutes bearing on the subject are those of December 1798, and that it appears from these records (in which reference is made to the existence of a Stock Exchange in 1773), and from tradition, that the business of stockbrokers and of jobbers in the public funds was conducted at the end of last century, not only in the Rotunda of the Bank of England, which was specially appropriated by the governor and directors for that purpose, but at rooms in the Stock Exchange Coffee House, in Threadneedle Street, to which any person was admitted upon payment of 6*d*.

Even at this early date these rooms were known as "The Stock Exchange," or "The House," and there is little doubt that while the greater part of the business carried on at the Rotunda related to small transactions by the public, and to the immediate transfer of stocks in the books of the Bank, the Stock Exchange rooms afforded a ready market

for the operations of the bankers, merchants and capitalists connected with the floating of the numerous loans raised at that period for the service of the State.

It is on record that the rooms were under the control of a "Committee for General Purposes," the expenses of the management being defrayed by the voluntary subscriptions of the frequenters, and that the functions of this Committee were then, as now, judicial as regards the settlement of disputed bargains, and administrative as regards rules for the general conduct of business, and for the liquidation of defaulters' accounts.

Early in 1801 it became apparent that the rooms did not afford sufficient accommodation for the transaction of the greatly increased business arising out of the creation of loans, hitherto unprecedented in amount, and, moreover, that the indiscriminate admission of the public was calculated to expose the dealers to the loss of valuable property. Under these circumstances, Mr. William Hammond and other gentlemen, who had acquired a site in Capel Court and its immediate neighbourhood (described as "a *centrical* situation"), succeeded in raising a capital of 20,000*l.* in 400 shares of 50*l.* each, and in founding a new undertaking, to which the affairs of the old rooms were ultimately transferred. The first stone of the new building was laid in May, 1801. A Committee for General Purposes, consisting of the nine promoters of the scheme and twenty-one other proprietors, was formed, and this body, whose *pro tem.* meetings were held at "The Antwerp" and other taverns in the neighbourhood of the Royal Exchange, proceeded to elect members by ballot at a subscription of ten guineas each. A deed of settlement, which, however, was not executed until the 27th March, 1802, was drawn up, and in this docu-

ment it is formally recited that "whereas the Stock Exchange in Threadneedle Street, where the stock-brokers and stock-jobbers lately met for the transaction of their business, having been found to be inconvenient," William Hammond and others, who were appointed trustees and managers of the undertaking, "came to a resolution to erect a more commodious building for the purpose."

In another part of the deed it is further recited, that the above-named W. Hammond and others had upon the site referred to, "caused to be erected a spacious building for the transacting of buying and selling the public stocks or funds of this kingdom, and the same is now nearly finished and is called the Stock Exchange, and is intended to go under that appellation."

It will further be found in this deed that the management, regulations, and direction of all the concerns of the undertaking were vested in a committee, consisting of thirty members or subscribers, to be chosen annually by ballot upon the 25th March; while the treasuryship and management of the building were placed under the sole direction of nine trustees and managers (separate from the committee) as representatives of the proprietors.

Under these conditions the new Stock Exchange was opened in March 1802, with a list of about 500 subscribers.

The objects of the undertaking may be described as follows:—

First, to provide a ready market; and secondly, to make such regulations as would ensure the prompt and regular adjustment of all contracts.

These regulations were first codified and printed in 1812, and have been from time to time altered according to the requirements of business.

A new deed of settlement was executed in 1876, in which the principles of the original deed have been substantially adhered to.

Present constitution.

Mr. Levien further furnished the Royal Commission with a statement on the present constitution of the Stock Exchange, which we again give in his own words:—

The administration of the Stock Exchange is vested in two bodies, whose functions are distinct. The managers, who represent the proprietors or shareholders in the undertaking called "the Stock Exchange" under the provisions of the deeds of 1802 and 1876; who are the executive of the landlords of the House and premises; have control of all moneys paid for admission; fix annually the charge for admission of members for the year ensuing; appoint all officials (except the secretary to the Committee for General Purposes and the official assignees), and superintend all matters connected with the building, supplies, &c.; always upon the understanding that the House is to be used only as a Stock Exchange. They are nine in number; three go out of office once in five years, and their election lies with holders of Stock Exchange shares, such shares being now 20,000 in number. The original number was 400 at 50*l.* each; they are now 20,000, upon which 12*l.* per share has been called; that is their nominal value; their real value is very much greater. The managers have no control over the business transacted in the Stock Exchange. The Committee for General Purposes, who have no power to interfere in the matters recited above as under the administration of the managers, but are the executive of the subscribers, *i. e.*, the members of the Stock Exchange. The Committee have control over the business of the House; make and administer the "Rules and Regulations for the

conduct of Business on the Stock Exchange;" adjudicate all questions between members, and complaints against members by non-members, if desired to do so by the latter; investigate whether their published requirements have been complied with by governments and companies asking for settlements or official quotations of loans or shares; and have vested in their hands the election by ballot of those who seek to become members of the Stock Exchange. They are thirty in number, including their chairman and deputy chairman, whom they elect annually. In March of every year they proceed to elect or re-elect all members for the year ensuing (Stock Exchange membership being granted for one year only); they then go out of office, and the newly constituted members elect a fresh Committee; outgoing Committeemen having the privilege of offering themselves for re-election.

The members alone (and their clerks) have a right of entry to the Stock Exchange for the transaction of business on payment of the admission fee and subscription fixed by the representatives of the shareholders. Those members who have not been clerks pay an admission fee of 300 guineas; those who have previously served as clerks during four years, pay an admission fee of 125 guineas. An annual subscription of 30 guineas is also payable by all members admitted since March, 1879, old members paying 20 guineas; these fees and subscriptions being substantially a rent paid to the shareholders for the use of the building.

Admission.

Candidates for membership must not be engaged in any business other than that of the Stock Exchange. Every candidate must be originally recommended by three members of not less than four years' standing who have fulfilled all their engagements. Each re-

commender must engage to pay 500*l.* to the creditors of the candidate in case the latter be declared a defaulter within four years from the date of his admission, and must not be indemnified by anyone on his behalf; but if the candidate has served as clerk to a member for four years previously only two guarantors are required in 300*l.* each. No member is allowed to be surety for more than three other members at the same time. Foreigners are not admissible unless naturalized two years previously. The election is by ballot among the Committee, and the members are subject to re-election each year.

Jobbers and brokers.

The members again are divided into two classes: dealers, or jobbers, and brokers, each class numbering roughly about a thousand. There is no formal distinction between them, and there is no rule to prevent a member acting as a dealer one month and as a broker the next; but the Committee do not allow members or their authorized clerks to act in the double capacity, nor do they permit partnerships between brokers and dealers.

The dealers, or jobbers, generally take up a definite position on the floor of the House, and remain there constantly, to be ready to deal with other members in the particular stocks to which they give their attention. As dealers confine their dealings to certain classes of securities, the floor space is practically divided, though there are no barriers, into a large number of separate markets, to one of which each jobber attaches himself.

Brokers, on the other hand, make their offices their rendezvous, and act as the means of communication between the outside public and the dealers. All brokers, whether members of the Stock Exchange or not, are still required by the Court of Mayor and Aldermen of the City to be admitted by them, to

take out a licence,[1] and to pay a yearly subscription to the Chamberlain of the City.[2] The court is compelled to admit anyone, not under disability, upon payment of 5*l.*, the old system of swearing brokers having long since ceased to exist, although some persons still continue to advertise themselves as "sworn brokers." These persons, it may be mentioned, are not members of the Stock Exchange, nor subject to the control of the Committee, inasmuch as members are forbidden, by the etiquette of their body, as enforced by the Committee, to advertise for business. The court also keeps a list of the names and addresses of all licensed brokers, and has power to remove the name of any convicted of felony or fraud. This licence is, however, entirely independent of the Stock Exchange; and, on the other hand, there is nothing to prevent a person taking out such a licence and acting as a stockbroker without being a member of the Stock Exchange. By a recent statute it is now rendered unnecessary for any broker to be admitted by the court after 29th September, 1886.[3]

"Sworn brokers."

The clerks, alluded to above, are also admitted by the Committee to the privilege of entering the House on the written application of their employers, subject to certain restrictions. Inside the Stock Exchange a list is posted containing the names of all clerks who are authorized by their employers to transact business, and distinguishing the clerks who are also members. The authority of such "authorized clerks" continues until revoked by a letter to the Committee, and gives them power to bind their employers in all ordinary transactions, but does not allow them to bor-

Clerks.

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[1] 57 Geo. 3, c. lx, s. 2; *Scott* v. *North*, L. R., 2 C. P. 270; *Scott* v. *Cousins*, and *Scott* v. *Inglis*, L. R., 4 C. P. 177.

[2] See 33 & 34 Vict. c. 60, s. 5.

[3] 47 Vict. c. 3.

row money without security, unless with the special authority of their employer. Authorized clerks pay an entrance fee of 20 guineas, and an annual subscription of 25 guineas; unauthorized clerks pay 10 guineas entrance fee, and 12 guineas subscription. Clerks, whether authorized or not, and whether members of the Stock Exchange or not, are not allowed to make any bargain in their own names, and any member who makes such a bargain with a clerk is liable to expulsion.

Business.

A person desirous of buying or selling securities may, of course, himself find some one willing to sell or to buy the same securities, and may deal with him without the intervention of the Stock Exchange; but the Exchange, being the only recognized market for such securities, affords to the public the very great advantage of being enabled, by means of a stockbroker and a jobber, to buy or to sell at any moment any quantity of stock or any number of any description of shares at the market price of the day, and to conclude the transaction, in the large majority of cases, on the following settling day at the latest.

If then the would-be buyer or seller wishes to avail himself of this advantage, he will enter upon a transaction of the kind which we propose in the following chapters to examine in detail.

The transaction is briefly to this effect:—The person supposed, not being a member of the Stock Exchange, instructs a stockbroker to act for him. The broker, whom we will assume to be a member, enters the House, seeks a jobber who deals in the particular security in question, and asks him to "make a price in it," not mentioning whether his instructions are to buy or to sell. The jobber does so by naming two prices, one that at which he will buy, the other that at which he will sell; the difference between these

Making a price.

two prices being the "turn of the market." This turn will, in the absence of fluctuations in price, constitute the jobber's profit, provided he can make the amounts of his sales balance his purchases. The jobber is of course not bound to make a price at all, but having done so, the broker is then entitled to announce himself as either a buyer or a seller at the price named, and the jobber is bound to accept a contract accordingly. He is not bound to deal to any amount that the broker may choose to name, certain limits being fixed[1] by the rules of the Stock Exchange, beyond which the offer does not bind the jobber. If then the broker has been instructed to buy or sell an amount in excess of these limits, and larger than the jobber is likely to deal in at the price made, it is open to the broker, if he chooses, either to name the amount in which he wishes to deal, leaving it to the jobber to withdraw or abide by his price, or to conclude a bargain with him at that price to the extent of the limit, or as far as he will go. The broker is not bound to disclose to the jobber the full extent of his order, so long as there is no misrepresentation, but by dealing he, so to speak, shows his hand, *i. e.*, shows himself to be a buyer or seller, and when he has thus dealt with a portion of his order, it may suit the jobber to make a proposal for the balance. The broker, in such case, is free to negotiate the balance in any way he thinks best, either with the same or other jobbers.

Turn of the market.

We have hitherto assumed the dealing to be in a "current" security; there is, however, a very large

Non-current securities.

[1] These limits are 1,000*l.* stock, or scrip, 750 francs French rentes, ten shares to bearer, and ten registered shares if in value under 500*l.*, or, if their value is higher, then such a number of shares as does not exceed 500*l.* in value.

number of securities of the "non-current" class, in which the buying and selling is not sufficiently frequent to enable the dealer to "make a price" with any reasonable certainty of being able to balance his transactions. In these cases the broker would ask the "dealer" to make a price in the same manner as when dealing with a "jobber" in a current security; but if, as is not improbable, he fails to find a dealer who will make a reasonable price, or any price at all, the frequent practice is for the broker to "open" to the dealer, that is to say, to tell him, so far as he thinks proper, having regard to the interests of his principal, and to what is fair towards the dealer, the nature and extent of his order, sometimes leaving it in his hands to be executed, with or without a stipulation as to the limit of the price, and the profit to be taken by the dealer. This method is technically called "negotiation," and dealing in non-current securities is commonly spoken of as a matter of negotiation.

An opinion is expressed in the Report of the Stock Exchange Commission, that in such cases it is not easy to see the advantage of the interposition of the dealer, and a suggestion is made that in the interest of the public it might be dispensed with altogether, and instead, that a book or register might be kept in the Stock Exchange, in which brokers could enter from time to time the names and quantities of any securities of the non-current class which they may have instructions to buy or sell, so as to bring the buying and selling brokers into immediate contact, and, by the exclusion of the middleman, to save to the parties the profits, sometimes unreasonably large, which he secures for himself. But it would seem that since an unreasonably large profit can be guarded against, if necessary by express stipulation, the matter

would be expedited by the intervention of the dealer, who would, in his own interest, use all his endeavours to conclude the transaction. A register of the kind suggested does exist in the House, but being restricted to securities in which no dealer can be found to make any price, it is very little used.

The contract.

Let us suppose, then, that a "price" has been made, and that the broker has declared himself a buyer; a contract is thereby concluded at the higher of the two prices named by the jobber; and usually each makes a memorandum in his note-book, but no written contract passes between them.

Marking.

The bargain having thus been made, either party to it may "mark" the price at which he has dealt, and this step, though not in any way compulsory, is very desirable for the satisfaction of both the broker and his principal. The "marking" is effected by the member handing to one of the clerks of the House a slip containing a note of the security in which he has dealt, and the price[1] of the bargain, and the clerk then records the price on the board. This board is an official record[2] of business done, and on it all dealings can be thus marked during the official hours from eleven to three. Bargains done in small bonds are marked with an asterisk (*), while bargains done for an exceptional amount and at special prices, are denoted by a double dagger (‡).

This is a great safeguard against any collusion between broker and jobber; for it is competent to the principal to insist, when the order is given, that his broker shall mark the bargain; and it is again competent to other members to object to the marking,

[1] The price marked is not allowed to contain fractions of less than $\frac{1}{8}$ of a £, except in the case of shares bought or sold at a price lower than £10, or stock at a price lower than 10 per cent.

[2] See Ch. VII.

and to have it struck out if the price should appear to be outside the current quotations, on obtaining the authority of the chairman, deputy-chairman, or two members of the Committee. Irregular marks are reported weekly to the Committee, who deal with each case as the circumstances require.

It is of course desirable that bargains should be marked immediately upon their completion; but the clerks of the House may, with the concurrence of a member of the Committee, quote omitted bargains, if notified before one o'clock, in the order in which they occurred, upon a written application from the buyer and the seller, stating the amount, the time when, and the price at which, such bargains were made; such application must be filed, and laid before the Committee at their next meeting. This regulation applies likewise to all bargains done between one and three o'clock, but is very rarely called into operation.

Contract note.

The broker then makes an entry of the bargain in his own books, and sends a contract note[1] to his principal, specifying the price, commission, stamps, and other charges, if any, and also the day for settlement, which is, in the large majority of cases, the following account day,[2] and usually mentioning the name of the jobber dealt with.[3]

Checking bargains.

On the following day the clerks of the broker and jobber meet in the checking room, and check the bargain so entered, which then rests until the account.[4]

Account day.

The account day is fixed by the Committee, and notice is given by the secretary of the day appointed. The account days for English and India stocks, &c.,

[1] Post, p. 54.
[2] As to bargains in scrip of new loans, &c., see Ch. VII.
[3] Post, p. 55.
[4] Post, p. 20.

which happen once a month—usually in the first week in the month—are always fixed at least five weeks beforehand; and those for foreign stocks, shares, &c., which happen twice a month, *i. e.*, at the middle and end of each month, are fixed at the first Committee meeting in the month preceding.

On these days the securities are, as a rule, delivered and paid for, unless some fresh contract has been entered into, rendering such delivery unnecessary. The completion of the contract is not necessarily carried out between the original parties to it; for the seller may have bought similar stock from some other person, and he in like manner from another, and so on through several hands; so that the whole series of bargains may be settled by the ultimate seller delivering to the ultimate buyer, the intermediate parties paying to one another only the differences between the prices of the different bargains.[1]

All bargains in registered shares or stocks, when no time is specified, unless made on ticket days, are considered as being made for the existing account. Similarly with bargains in securities to bearer made before the ticket day, and with all bargains in English and India stocks, &c., unless otherwise expressly stated when the bargain is made.

Bargains scrip.

Bargains in the scrip of a new loan or the shares of a new company are contingent on the appointment of a special settling day, which is only appointed by the Committee after application has been duly made, and all the requirements enumerated hereafter[2] have been fulfilled to their satisfaction. The effect of the refusal of a settlement being to cancel such bargains, it is now never refused, unless some real impediment exists to the punctual carrying out of bargains, the

[1] Post, p. 23.

[2] See Ch. VII.

result of conspiracy on the part of promoters or directors. Bargains in new loans or undertakings, and in allotments of new shares in old undertakings are, as a matter of practice, frequently settled previously to the fixing of a special settling day. The Committee does not, however, recognize dealings in allotment letters.

Foreign loans quoted abroad.

Bargains in foreign loans which are officially quoted in the country to which they belong, although having no quotation on the Stock Exchange in London, are considered to be made for the ordinary settlements.

These fixed and recognized settling days have become, by long usage, an integral part of the Stock Exchange system, and very much facilitate business on a large scale. By this arrangement all the sellers of stock agree to deliver it on the same day upon which the buyers are prepared to pay for it, and if during the fortnight between one account day and the next, there have been several transactions between members in the same stock, only the balance passes. All this saves an immense amount of trouble, and makes ready dealing at close prices in large amounts practicable. If all dealings in registered securities were for cash, the number of necessary transfers would be multiplied, each involving stamp duty, and the dealing prices would have to be made sufficiently wide to cover these expenses. It will be observed that by this system the interval, in most transactions, between bargain and payment, is limited to a fortnight at longest—a very short period as compared with the usage in most branches of business, but having the important effect of compelling every member to prove his solvency once a fortnight. The shortness of this period has led, as was inevitable, to the adoption of a mode of as it were postponing the settlement of bargains by closing and

simultaneously reopening the account. This is known as "continuation" or "carrying over."

Continuation is not confined to speculative transactions; it may often suit bonâ fide buyers or sellers to continue stocks bought or sold. The modus operandi of continuing is as follows—we will suppose the case of a purchaser who does not intend taking up:[1]— upon the first of the three days over which the settlement extends (*i. e.*, two days previous to the account day) the seller, in consideration of a payment made to him by the buyer, enters into two contracts with the buyer; one, a contract for the purchase of the same amount of the stock as he has contracted to sell (such contract to be completed on the settling day, so as to cancel the subsisting contract), and the other, a fresh contract for the sale of the same amount of stock, to be completed on the subsequent settling day. The result is that the vendor and purchaser stand in precisely the same position as if there had been no previous contract (except as regards the consideration for the continuation), because the difference between the original contract price and the price at which the carrying over is effected must be paid at once, that is to say, on the settling day. The nominal price of the security at which the carrying over is effected would obviously be quite immaterial to the parties, since the two contracts balance one another, were it not that this difference is payable immediately. Being payable immediately, more bargaining would be-

Continuation.

[1] The Stock Exchange slang term for speculative buyers is "bulls," and for speculative sellers "bears." These terms are commonly somewhat loosely applied, all dealers, in fact all members, who stand to pay for stock being classed as "bulls," and all who stand to deliver as "bears;" but when the terms are applied to persons other than members, their signification is generally restricted to speculators for the rise or fall.

come necessary to fix the price for the new contracts; but this is obviated by the publication of a list of "making-up prices," which are, in round figures, the approximate values of all the recognized securities on that day, as settled by the clerks of the House in the various markets, and are usually based upon the actual market price at midday. In case of any dispute as to the making-up prices, or of any omission in fixing them, the clerk acts upon the decision of two members of the Committee. All continuations must be effected at these prices, or, if the securities are so unfrequently dealt in as not to find a place in this list, at the then existing market price, as determined by arrangement between the parties.

Making-up prices.

The consideration thus paid by the buyer, for which the seller agrees to buy back for cash and re-sell for the following account, is called a "contango"; on the other hand, a "backwardation" is the premium paid by a seller of stock for the supply to him by sale for cash of stock enabling him to complete his contract, while simultaneously re-selling it to the supplier for the following account.

Continuation may be, and frequently is, effected between persons other than the parties to the previous contract. Either buyer or seller may not desire to continue at all, or may prefer to continue the transaction elsewhere. If a buyer thus continues stock with a person other than the original seller, he, having sold what he had bought, merely stands to take up the stock from one member and deliver it to another, and this task is now undertaken for him by the clearing or settlement department, but is carried out without any transfer of liability. This done, the purchaser is in the position of a buyer for the following account day, instead of that for which he had originally bought.

When a broker has effected a continuation for his principal, he renders him a contract note, showing the sale of his stock at the making-up price for the current account, *i. e.* for cash, and its repurchase for the next account at the same price, plus the contango, which thus represents the value of the money practically borrowed, together with the consideration, if any, for the accommodation; and, in the case of registered securities, if the lender of the money is obliged to take them into his own name, this will include the cost of stamps and transfer fees, from the payment of which the principal is pro tempore relieved. This contango or difference between the price of sale for the current account and the actual buying price for the next account will be regulated partly by the nature of the security, partly by the current rate of interest, and partly by the demand existing for such accommodation. Contango.

It should be here observed that it is open to a purchaser, who does not wish to pay for his stock, but is prepared to find the customary margin, to take it up and pawn it with bankers or others. This alternative limits the rate of contango he will be willing to pay.

It sometimes happens also that the amount of stock sold for the settlement is greater than the sellers are able to deliver.[1] In this case the buyer, instead of having to pay a contango, is able to exact a consideration from speculative sellers (bears), for consenting to carry over his purchase. A bonâ fide holder of stock may also lend[2] it for a similar consideration. As observed above, this consideration is called "backwardation." The only limit to the Backwardation.

[1] This state of things is called a "bear account."

[2] Though commonly called "lending," this transaction is really a sale and repurchase. See next page.

backwardation is such a rate as will tempt bonâ fide holders to temporarily part with their stock, and will reimburse them the costs of retransfer to themselves. In these cases the broker having similarly effected the continuation, renders a contract note to his principal, showing the sale of his stock at the making-up price for the current account, and its repurchase for the next account at a lower price. The difference between these prices is the "backwardation."

It will be observed, therefore, that it does not necessarily follow either that the buyer will have to pay, or that the seller will receive contango when he is desirous of carrying over; for in the case of a backwardation the position is reversed.

Carrying-over day.

If a principal is desirous of carrying over, he must give instructions in due time. The day which is fixed as "carrying-over" day is the next day but one before the account day, and on that day continuations are effected. The reason of this is that the settlement practically commences on that day, for although we have hitherto considered it as being effected in one day, there is really a great deal of work to be done preparatory to the payment and delivery on the account day, and this work is commenced two days previously, so that the settlement actually extends over three days.

Distinction between loans and continuations.

The taking in of stock by way of continuation must not be confounded with the case of an ordinary loan of money upon the security of the stock. The taker in of stock becomes the purchaser of it for the current account,[1] and the property passes to him, but coupled with a concurrent obligation to deliver back a like amount of stock on the ensuing account—the purchase of the stock and the obligation to deliver back is one transaction; but the entry in the books

[1] See *Allen* v. *Graves*, L. R., 5 Q. B. 478.

of a member might not show whether such a transaction was a purchase or a taking in. The taker in is therefore entitled to sell or deal with the stock as his own. In cases of loans, on the other hand, the lender is not entitled to place beyond his control shares or stock received as security for money advanced; and he may, after reasonable notice, and upon payment of the principal together with interest up to the time for which the loan was originally made, be required to return the identical bonds, or to re-transfer the shares or stock given as security for the loan. The lender of the money becomes a pawnee of the property, and is not entitled to sell it[1] until the borrower makes default in keeping up the stipulated margin, or in repaying at the due date, or, if no time is fixed for repayment, then not until a demand for payment has been made and refused;[2] although when a member of the Stock Exchange is declared a defaulter during the currency of a loan, any securities pledged by him are sold at once without demand.[3] In the case of an irregular sale the owner has a right to charge the pawnee with the price he gets for the property, if he finds it to his interest to do so; there is, however, nothing to prevent the pawnee from transferring the security during the currency of the loan and raising money upon it by way of sub-mortgage or otherwise, provided that he do not place it beyond his control.[4] He must account to the owner for any dividend or bonus received while the security is in his possession,[5] but deducting interest

Loans, dealing with the security.

Security to be returned when required.

[1] As to foreclosure, see *Carter* v. *Wake*, 4 Ch. D. 605, where it was held that this remedy does not apply to railway bonds or other personal chattels, because the legal ownership does not pass by the deposit.

[2] *France* v. *Clark*, 26 Ch. D. 257.

[3] See also Rule 152.

[4] *Langton* v. *Waite*, L. R., 6 Eq. 165; Ib. 4 Ch. 402.

[5] See *Vaughan* v. *Wood*, 1 Myl. & K. 403.

thereon at the same rate as the original loan. If he is unable to redeliver the security as agreed, the damages recoverable against him in an action are estimated upon a principle differing from the usual rule in cases of non-delivery of goods sold and not paid for (*i. e.*, the difference between the contract price and the market value at the time the contract was broken). The rule to be collected from the cases[1] seems to be that, so far as the lender of the security has the money advanced by borrower in his hands, he ought to apply it towards the purchase of a like security immediately upon the failure to redeliver, and then the measure of damages will be the whole value of the residue of the security taken at its price at the time of trial.[2] It has been held that a plaintiff could not recover damages for loss sustained in consequence of the detention of his scrip having prevented his paying up deposits which would have entitled him to an allotment of other shares, as this damage was too remote.[3]

Making-up day.

The carrying-over day, or first day of the settlement, is called the "making-up" day. On that day a process is commenced with a view to facilitate the work of the account day. The clerk of any member who has both to take and deliver the same stock in the House will inquire of those from whom he has bought (or to whom he has sold, as the case may be), the names of any members from whom they take the stock; should any one of these prove to be one of the members to whom the former has to deliver any of the stock, the bargain may pro tanto be "made up"

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[1] *Gainsford* v. *Carroll*, 2 B. & C. 624; *Owen* v. *Routh*, 14 C. B. 327; *Shaw* v. *Holland*, 15 M. & W. 136; and *M'Arthur* v. *Seaforth*, 2 Taunt. 257.

[2] But see *Sanders* v. *Kentish*, 8 T. R. 162; and *Forrest* v. *Elwes*, 4 Ves. 492.

[3] *Archer* v. *Williams*, 2 C. & K. 26.

between them on notifying the fact to this third member, and for the amount so made up no stock need pass; or by inquiry from this third member, should he not happen to be one to whom the former has to deliver, the bargain may be traced to such a member, and thus made up. This process is now becoming almost a thing of the past, the Settlement Department having undertaken the work of making-up for all members who subscribe to it. No making-up is binding except at the fixed making-up prices of the day.[1]

Ticket day.

The second day of the settlement is called the "name day," or "ticket day." On that day the process commenced on the making-up day is continued so as to bring all the ultimate buyers and ultimate sellers into contact. This is done in the following manner: A buying broker who wishes to take up his security, if it be one which is deliverable by deed of transfer, must issue a ticket with his own name upon it as payer of the purchase-money, and with the date, the amount of the stock, and the name of the member to whom it is issued. The ticket must also specify the price of the stock, and the name, address, and description of the transferee in full. It must be issued before twelve o'clock,[2] and be passed by the purchasing member to his immediate seller. Each intermediate seller in succession endorses the name of his seller, and passes on the ticket, which thus finally comes to the hands of the intending transferor, and must be left with him before half-past one o'clock. If the amount represented by any ticket has been bought by any one of the intermediate parties from more than one person, the ticket must be "split," and new tickets

Passing names.

Splitting tickets.

[1] Ante, p. 16.

[2] Post, p. 77.

passed representing the different portions of the original amount. In the case of securities to bearer, a ticket may be issued up to two o'clock, and passed from hand to hand in the Stock Exchange[1] till three, the holder at this time being compelled to deliver the securities. Splitting is not allowed in the case of tickets for securities to bearer, odd amounts being settled without any tickets if necessary.[2] It will be understood that, with all intermediates, the passing of tickets obviates the actual passing of stock. In the case of registered stocks, the ultimate buyer's price is named on the ticket for insertion in the transfer deed, but the tickets are passed through the books of all the parties, and the stock accounted for at the making-up price of the previous day. This process, though still in operation, is, like the making-up of the previous day, to a great and growing extent being superseded by the clearing system of the Settlement Department.

Unsettled bargains in registered securities.

On this day also all bargains in registered securities, for which no ticket has been passed, are brought down and temporarily adjusted at the making-up price of the day, the difference being paid just as in the case of a formal carrying over. This adjustment is repeated on each subsequent settling day until the transaction is closed, but unless the bargain is settled and a name passed within the three following ac-

[1] A seller cannot be compelled to accept a ticket at his office after half-past two.

[2] In the case of securities to bearer, the tickets must bear distinctive numbers and be for the following amounts, viz.:—1,000*l.* stock, or multiples of 1,000*l.* up to 5,000*l.*; 1,000*l.* Italian stock, or multiples thereof, up to 5,000*l.*; also 800*l.*, or multiples thereof, up to 4,800*l.*; $5,000 American stock, or multiples thereof, up to $25,000; Fcs. 1,500 French 3 per cent. rentes, or multiples thereof, up to fcs. 6,000; 10 shares, or multiples thereof, up to 100.

Tickets for 500*l.* stock may be passed for bargains, or balances of that amount.

counts, it is considered as absolutely made up and closed so far as intermediate parties are concerned. This is, however, not a frequent occurrence, a ticket being almost invariably passed on the name-day, for, if not passed, the stock is usually "sold out" promptly.[1]

Then on the third and last day of the settlement (called the "account day" or "pay day") the delivery of securities commences at ten o'clock, and the actual payment takes place of what are called "differences." The manner in which differences arise in connection with carrying over has already been explained; and when tickets are passed through members' books, as described above, differences arise in precisely similar manner. The difference is simply the balance between the price of the original bargain and the making-up price at which the account is adjusted, either by a continuation, a making-up, or the passing of a ticket. Thus differences arise and are settled in precisely the same way, whether the business is of an investing or of a speculative character. With dealers, whose object is to make the amounts of stock bought and sold as nearly as possible balance each other, the bulk of the cheques passed will be differences, whatever the nature of the buying and selling. With brokers, on the other hand, payments at the making-up prices for genuine investments and realisations will be additional to the payment of the differences which arise in connection with both these and speculative transactions. In payment of differences bank notes or cash do not pass and cannot be demanded. All payments on account of differences must be by crossed cheques on a clearing house banker, and the whole of the differences to which any member becomes entitled,

Settling day.

Differences.

[1] See p. 75.

or is liable to pay, must all pass through the clearing house together, so that the credit differences of each member are, as it were, directly hypothecated for the payment of his debit differences.

Securities to bearer are very frequently settled between the original parties to the contract by delivery and payment at the price of the bargain without the intervention of tickets. When, however, tickets have been passed, or the stock made-up in any way, the differences having been settled, the stock itself has still to be passed, and the residue of the purchase-money, that is to say, the value at the making-up price, has still to be paid.

Payment of purchase-money.

This payment does not become due until actual transfer of the property, which may perhaps not happen until some subsequent day, and if the security is not presented before half-past two o'clock (or one o'clock on Saturdays), payment cannot be demanded till the following day; but since all securities are supposed to be delivered on the account day—and securities to bearer generally are so—the purchase-money will also generally have to be paid on that day. Securities to bearer, where a ticket has been passed, must be delivered before half-past one o'clock; and where a ticket has been refused by the seller, in the exercise of his right under the rules to elect to take delivery of the security from his immediate seller, they must be delivered before half-past twelve. In the case of registered securities it is considered reasonable that a certain time should be allowed for the selling broker to get the transfer deeds executed, which may require the signatures of perhaps three or four persons, all residing at a distance. Accordingly, by the rules, ten days are allowed within which to deliver such transfers.[1]

[1] Transfer receipts for English and India stocks, &c., bought for a specified day, must be delivered by a quarter

On this day, also, any amounts of securities to bearer, which remain undelivered, are brought down, and temporarily adjusted at prices fixed by the clerk of the House at half-past two o'clock, and the differences paid in the usual manner. The description of the compulsory closing of unfulfilled bargains by the summary process of buying in or selling out is reserved for subsequent chapters. Unsettled bargains in securities to bearer.

Another form of contract in use on the Stock Exchange, known as an "option," is a contract under which a person, on consideration of a payment of "option money" to the contractee, acquires the right to deal with him on a fixed future date, in a specified amount of a certain stock, at a price agreed on at the time. This price is usually the market price of the day, with a reasonable addition for the amount of contango accruing during the period the option is open. Options are of three kinds: first, a "put," which gives the option of putting or selling stock, or not, on the day fixed, at the agreed price; secondly, a "call," which gives the option of calling or buying stock, or not, on the day fixed, and is the converse of the "put;" and, thirdly, the "put and call," which is a combination of the preceding two, *i.e.*, gives the option of either putting or calling, or not doing either on the day and at the price fixed, and for which, therefore, the premium or option money is usually double. Options must be declared, that is to say, the giver of the money must announce his intention of exercising or abandoning his right to deal at a quarter before three o'clock on the day before the ticket day of the account for which the bargain has been made. If the option has been

Options. Put. Call. Put and call.

before four o'clock, or by half-past one o'clock on Saturdays.

Omnium or scrip, not paid in full, must be delivered before two o'clock, or by one o'clock on Saturdays.

made for a special day and not for the account, it must be declared at a quarter to three on that day. In either case the premium, or option money, is payable on the following settling day.

As a matter of practice the price generally determines clearly enough in what manner the option will be exercised, and the absence of one of the contracting parties will not, in such case, interfere with the carrying out of the bargain in the manner indicated by the price. But when the price is so close to the agreed price of the option as to make its exercise doubtful, it is essential that the option should be declared by the "giver" (or person paying the option money) to the "taker" at the proper time.

Effect of exercising option.

The effect of exercising the right given by the option is to transfer the property as upon the day on which the bargain was originally made, that is to say, the transferor is liable to account for any dividend, bonus, or new shares which may have been issued to him, pending the option. In fact, the practice is to treat the single option as a definite bargain of sale or purchase (as the case may be) for the fixed future day, coupled with the right of closing on that day at an agreed price. Thus a "call" is entered in the books not as an optional purchase, but as an actual purchase, a further memorandum being made by which the seller undertakes, if called upon, to effect a fresh contract on the expiration of the former one for the repurchase of a similar amount of stock at a certain lower price, the difference between these two prices being the "option money." By this it will be seen that the purchaser can call upon the vendor to deliver the stock to him without making any further bargain, although it is customary to inform the seller of the intention to call the stock;

and, presuming the contract to have been effected with due regard to Rules 76 and 86, limiting the period over which a bargain can be extended, the non-delivery by the vendor would bring him under the rules applicable in cases of default. An option for a longer period than the ensuing two accounts would, under those rules, not be recognized by the Committee.

Business in options.

It may often be to the advantage of an intending bonâ fide purchaser of stock to take money for the put of it at a future date, instead of making an immediate purchase. This would be the case where the stock is quoted at a higher price than the intending purchaser is prepared to give, while he would be glad to buy at a reduction equal to the market price of the option. If he then takes the option money for the put at the price of the day, he is in this position:—On the day when the option has to be declared, if the price has risen in the meanwhile, he has profited by securing the option money; and if the price has fallen, he finds the stock put upon him, but the nett cost of it (deducting the option money received), is no more than we have assumed him to be willing to pay for the security. And conversely an intending seller may take money for the call, and should the price fall so that the stock is not called of him, he will reduce the price of his holding by the amount of the option money.

Gaming contracts.

Although these contracts may thus be regarded as mere varieties in form of a bargain for outright purchase or sale, nevertheless a question may arise as to what extent they would be held void at law, as being by way of gaming or wagering. This question does not seem to have yet been decided, but would appear to depend in each case upon the intention of the parties.

It is provided by statute[1] "that all contracts and agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void; and that no suit shall be brought or maintained in any Court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made."

It is to be observed that this enactment does not make the contracts themselves illegal;[2] it only provides that they are null and void, and that no action can be maintained upon them. It differs in this respect very materially from the old statute, known as Sir John Barnard's Act,[3] by which contracts of this nature were forbidden under a penalty, and where, therefore, no claim in any way arising out of such a contract could be enforced at law, because tainted with illegality.[4]

Grisewood v. *Blane.*

The test by which to decide whether an option, or any other form of contract on the Stock Exchange, falls within this provision may be found in the question left to the jury by Jervis, C. J., in the case of Grisewood *v.* Blane.[5] This was an action by a stock-jobber against a person who had, through his broker, contracted to sell certain shares to him, had carried over, and had afterwards bought them back at a loss, but refused to pay the difference, relying on the above Act of Parliament. The Lord Chief Justice left it to the jury to say what was the intention of the parties at the time of making the contract; whether either party really meant to purchase or to

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[1] 8 & 8 Vict. c. 109, s. 18.

[2] *Fitch* v. *Jones*, 5 E. & B. 238.

[3] 10 Geo. 2, c. 8, repealed in 1860 by the 23 Vict. c. 28.

[4] *E.g.*, broker's commission; see p. 57.

[5] 11 C. B. 538.

sell the shares in question; telling them that, if they did not, the contract was a gambling transaction, and void. The jury found for the defendant, and the Court afterwards refused to grant a new trial, holding that the true question had been left to the jury, and that they had been justified in coming to the conclusion that it was a gaming transaction.

Continuations not within the statute.

This verdict has been judicially disapproved of in subsequent cases,[1] as being not easy to justify, and as proceeding probably upon a misunderstanding by the jury of the nature of the evidence before them; but the direction of the learned Chief Justice at the trial has been approved and followed on several occasions.[2] It may therefore be taken to be established that where neither of the ultimate contracting parties has in view a real purchase or sale, but a payment of a difference according to the rise or fall in price is alone contemplated, then the contract would, as between them, not be enforceable at law. This, as we shall see, does not affect the rights of the brokers or intermediate parties who have entered into real contracts which they are liable to complete according to the rules of the Stock Exchange. Nor does it touch the question of the payment of differences on continuing stock, where, for instance, as we have explained, a speculative buyer may have procured someone to lend money upon a security bonâ fide deposited, and may become liable to pay a difference if it falls in price. A transaction of this sort was held void by a Commissioner in Bankruptcy, but on appeal to the Lords Justices his decision was reversed.[3]

[1] *Marten* v. *Gibbon*, 33 L. T., N.S. 316; and *Thacker* v. *Hardy*, 4 Q. B. D. 685, per Brett and Cotton, L.JJ.

[2] *Knight* v. *Cambers*, 15 C. B. 562; *Ashton* v. *Dakin*, 7 W. R. 385; *Rosewarne* v. *Billing*, 15 C. B., N. S. 316.

[3] *Ex parte Phillips*, 30 L. J., Bkptcy. 1.

Another case[1] was argued at the same time before the Lords Justices, in which a broker who held certain shares had sold them to another broker at a fixed price, and on each settling day after the sale differences were paid, sometimes by the one, sometimes by the other, according as the price fluctuated, until at last the selling broker kept the shares at their value and claimed the final difference, which the purchasing broker was unable to pay, and, before action brought, he had been declared a defaulter, and had ceased to be a member of the Stock Exchange. There was in this case no delivery of shares, and Turner, L. J., said, that if the case had rested there he should have felt considerable doubt about it, and that, having regard to the case of Grisewood *v.* Blane, he would possibly not have allowed the claim without some further investigation before a jury or otherwise; but it appeared that when any dividends were paid on the shares they were accounted for to the buyer, and also, on one occasion, the seller did buy back some of the shares from the buyer at their then market value, and accounted to him for the price. The learned Lord Justice added that the mere payment of dividends might not perhaps have altered the case, as it was not necessarily inconsistent with the whole transaction having been fictitious, and a mere cover for the payment of the differences; but he thought the repurchase of some of the shares, and the payment of their price, were facts inconsistent with that view, which stamped the transaction with the character of reality, and the claim was therefore allowed.

Thacker v. *Hardy.*

Again, in the later case of Thacker *v.* Hardy,[2]

[1] *Ex parte Marnham*, 30 L. J., Bkptcy. 3.

[2] 4 Q. B. D. 685, followed *Ex parte Rogers*, 15 Ch. D. 207.

a claim was made by a broker, who had failed and whose accounts had been closed compulsorily, against his principals, to recover the balance due, and the claim was resisted on the ground that it arose out of gaming transactions. The facts found at the trial were, that the principals were speculators to the knowledge of the broker, and that they employed him to speculate for them on the Stock Exchange, and that the principals, although they never expected or intended to accept or deliver the securities bought or sold, knew that they incurred the risk of having to do so, but were content to run that risk in the expectation and hope that the broker would be able so to arrange matters that nothing but differences should become actually payable to or by them, as the case might be. This arrangement rendered it necessary for the broker to enter into real contracts of purchase and sale with jobbers; and in respect of these contracts he incurred personal liabilities against which the principals were held bound to indemnify him, upon the general principles discussed in the following chapter, inasmuch as the transactions, even if voidable as being by way of gaming, were not illegal; judgment was therefore given in favour of the broker, and was subsequently affirmed by the Court of Appeal.[1]

Put and call options.

Upon considerations of this nature will depend the question whether, in any particular case, an option is voidable as a wager. On the one hand the object of both contracting parties may be merely to afford a sort of hedge behind which they may operate to take advantage of fluctuations with a view to profit by differences quite independently of any bonâ fide transfer

[1] 4 Q. B. D. 685; see also *Cooper* v. *Neil*, 27 W. R. 159.

of stock. On the other hand, there may be cases where even a "put and call" may be contracted for with the real intention of transferring stock. Let us suppose a person who is possessed of certain securities to be desirous of selling if he could get a bid, say one per cent. higher than the present price, and to be at the same time desirous of doubling his holding if he could buy at a price one per cent. lower. If he gives instructions in this form to his broker, it may well happen that the price does not fluctuate sufficiently to make it possible to carry out either transaction. But the same practical result may be attained with certainty by the owner of the securities taking one per cent. for the put and call of them, for the money thus received would be, as it were, a reduction of one per cent. in the purchase price if the security is put upon him, and would equally, as it were, go to increase the selling price if it is called from him. There is, of course, this difference, that if the security is at precisely the same price on the option day as on the day the bargain was made, it may happen that the security is neither put nor called, and in that case the owner will have secured his one per cent. without further liability, and be in a position to repeat the process. Under such circumstances the option could not be said to be voidable as a wager.

Time bargains.

"Time bargains" again are commonly stated to be voidable. These are in fact the result of two distinct and perfectly legal bargains, namely, first a bargain to buy or sell, and secondly, a subsequent bargain that the first shall not be carried out; and it is only when the first bargain is entered into upon the understanding that it is not to be carried out, that a "time bargain," in the sense of an unenforceable

bargain, is entered into.[1] Such bargains are very rare; and are practically unknown on the Stock Exchange, where contracts for the payment or receipt of differences are never made. All contracts, bargains, and transactions on the Stock Exchange are real, and all contemplate and compel the actual delivery of the securities and payment of the price, which can only be avoided by a new and equally real bargain of a contrary nature.

These remarks as to the voidability of contracts do not, of course, apply to bargains made between members of the Stock Exchange, for they are bound by their rules, as we shall see hereafter, to refer their disputes to a tribunal which does not afford to persons dissatisfied with their contracts any facilities for repudiating them.

Leeman's Act.

Another statute may be noticed here, under which certain contracts for purchase or sale of shares in joint-stock banks are rendered void. It is commonly known as Mr. Leeman's Act, and was passed in the year 1867,[2] but seems to have been completely disregarded upon the Stock Exchange. The enactment is, "That all contracts, agreements, and tokens of sale and purchase which shall be made or entered into for the sale or transfer, or purporting to be for the sale or transfer, of any share or shares, or any stock or other interest, in any joint-stock banking company in the United Kingdom of Great Britain and Ireland, constituted under or regulated by the provisions of an Act of Parliament, royal charter, or letters patent, issuing shares or stock transferable by any deed or written instrument, shall be null and void to all intents and purposes whatsoever unless

[1] Per Lindley, L. J., in *Thacker* v. *Hardy*, 4 Q. B. D. 689.
[2] 30 Vict. c. 29.

such contract, agreement, or other token shall set forth and designate in writing such shares, stock, or interest by the respective numbers by which the same are distinguished at the making of such contract, agreement, or token on the register or books of such banking company as aforesaid, or where there is no such register of shares or stock by distinguishing numbers, then, unless such contract, agreement, or other token shall set forth the person or persons in whose name or names such shares, stock, or interest shall at the time of making such contract stand as the registered proprietor thereof in the books of such banking company; and every person, whether principal, broker, or agent, who shall wilfully insert in any such contract, agreement, or other token any false entry of such numbers, or any name or names other than that of the person or persons in whose name such shares, stock, or interest shall stand as aforesaid, shall be guilty of a misdemeanor, and be punished accordingly, and, if in Scotland, shall be guilty of an offence punishable by fine or imprisonment."

In a recent case[1] under this Act the defendant, a broker, who had undertaken to sell shares of a joint-stock bank for the plaintiff, a shareholder, sold them to a jobber on the Bristol Stock Exchange, and sent a contract note to the plaintiff, but in accordance with the custom of the Stock Exchange, the bought and sold notes between the defendant and the jobber omitted to state the name of the registered proprietor of the shares as required by the statute, by reason of which the contract for sale was void. The bank having stopped, and an order for its winding-up

[1] *Neilson* v. *James*, 9 Q. B. D. 546; see also *Mitchell* v. *City of Glasgow Bank*, 27 W. R. 875.

having been made before the day on which the jobber was entitled to name the person willing to be the purchaser, the contract for sale was repudiated by the ultimate purchaser, in consequence of which the plaintiff remained on the register of shareholders, and was obliged to pay calls. It was held, in the Court of Appeal, that the defendant had committed a breach of duty in not making a valid contract for sale, notwithstanding the custom of the Stock Exchange to disregard the statute, as such custom was both unreasonable and illegal, and that for such breach of duty the plaintiff was entitled to recover from the defendant by way of damages the price at which the shares had been sold. An indemnity against the calls was also claimed in the action, but subsequently abandoned by the plaintiff's counsel.

This case was decided according to the rules and customs of the Bristol Stock Exchange, where it did not appear that the contract was subject to the final arbitrament of any committee or similar body.[1] In London there is not only the same custom to disregard the statute, but this custom is upheld by the Committee, in so far that they will not entertain any application to annul such a bargain unless upon some specific charge of fraud, or wilful misrepresentation.

[1] In an action now pending by a broker in London against his principal for the price of bank shares purchased and paid for by the broker, but of which the numbers had not been given at the time of the contract, leave to defend, on the ground that under this Act the contract was not binding, was only granted conditionally on payment into Court of the amount. *Barclay* v. *Pearse*, Court of Appeal, August 2, 1884.

CHAPTER II.

PRINCIPAL AND BROKER.

The order given by principal.

THE first step in the transaction we propose to follow out is the order given by the principal to his broker. And in accordance with the general rule of law that a person who deals in a particular market must be taken to deal according to the custom of that market,[1] the principal will be taken as intending that his order shall be carried out according to the general usages of the Stock Exchange,[2] assuming, of course, that they are not illegal or wholly unreasonable;[3] and it has been further held that the order itself may, as between the principal and broker, be explained and interpreted by evidence of those usages.

How interpreted.

In the case of Mitchell *v.* Newhall,[4] a principal had given an order to his broker for the purchase of "shares" in a company of which at the time no shares existed, but letters of allotment were commonly bought and sold on the Stock Exchange as shares; the broker accordingly bought a letter of allotment, which the principal refused, but, on action brought, he was compelled to accept, Pollock, C. B., saying, that the defendant could not avail himself of his supposed ignorance of the mode of business on the Stock Exchange; the broker had received an

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[1] *Wigglesworth* v. *Dallison*, 1 Sm. L. C. 598; *Fleet* v. *Murton*, L. R., 7 Q. B. 126.

[2] *Sutton* v. *Tatham*, 10 A. & E. 27; *Bayliffe* v. *Butterworth*, 1 Ex. 425; *Grissell* v. *Bristowe*, L. R., 3 C. P. 112.

[3] As in *Neilson* v. *James*, 9 Q. B. D. 546, ante, p. 34.

[4] 15 M. & W. 308.

order from his principal to purchase for him something, and it was for the jury, after hearing evidence of the usage, to say what that something was.[1]

And in the case of Stewart *v.* Cauty,[2] a contract for the purchase and sale of certain shares in the Great Western Railway had been made among parties who were none of them members of the Stock Exchange; and still, evidence of the rules was held admissible in interpreting the contract as a guide to the determination of what was a reasonable time for delivery of the shares, but not, it is true, as being binding upon the parties.

Where evidence of usage not admissible.

On the other hand, a custom which is contrary to the law of the land will not be allowed to control the law; nor will a person who is not a member of the Stock Exchange be allowed to be prejudiced by any usage which is not reasonable, unless specially assented to, so as to form part of the contract; and it may further be that some of the usages of the Exchange, which relate rather to matters of practice and mutual convenience amongst the members themselves, might be held to be not of such general nature as to bind third parties who are not aware of them.[3]

Duty of broker to act in accordance with usage.

Conversely, a broker cannot bind his principal by transacting business in any other than the ordinary method, unless by express consent. Thus, for example, if stock be usually sold for ready money, he cannot bind his principal by a sale upon credit unless specially authorized, although by giving credit he may be acting bonâ fide with a view to benefit his principal;[4] or if stock be usually sold for the ensuing

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[1] See also *Morris* v. *Hunter*, 14 L. T., N. S. 897.

[2] 8 M. & W. 160.

[3] See *Sweeting* v. *Pearce*, 7 C. B., N. S. 449; *Meyer* v. *Dresser*, 16 C. B., N. S. 646; *Grissell* v. *Bristowe*, L. R., 3 C. P. at p. 128; and *Robinson* v. *Mollett*, L. R., 7 H. L. 802.

[4] *Wiltshire* v. *Sims*, 1 Cam. 258; *Brown* v. *Boorman*, 11 Cl. & Fin. 1.

account, he cannot bind his principal by dealing for a future account, or by carrying over, unless authorized to do so.[1]

Special terms.

Questions may still arise as to the extent to which private instructions given to the broker would be allowed to limit the general authority which he receives to deal according to the custom of the Exchange; but it is submitted that no such instructions would affect the rights of third persons who, without notice, have dealt with the broker in the usual course of business in the House.[2] Still, it seems clear that there is nothing to prevent a principal making with his broker any contract they please so as to be binding as between themselves, even though expressly contrary to the rules made by the Stock Exchange for the regulation of contracts between their own members.

Where order illegal.

It would not be out of place here to notice a curious case which occurred in the winding-up of a banking company, the directors of which had given orders to their broker to buy on behalf of the bank a round number of their own shares, with a view to keep up the price. This order was wholly ultra vires, but was executed by the broker in due course, some of the shares being taken and paid for by the directors and their friends, but the rest were transferred to a trustee for the company, and the broker's account with the bank was credited with the price. The question which came before the Court was whether this amount could be proved for in the winding-up. Lord Romilly, M. R., thought that the proof should be admitted,[3] for it was not the duty or the business

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[1] *Maxted* v. *Paine*, L. R., 4 Ex. 81; *Maxted* v. *Morris*, 21 L. T., N. S. 535.

[2] See *Crabb* v. *Miller*, 24 L. T., N. S. 219.

[3] *Re London, Hamburg and Continental Exchange Bank, Zulueta's claim*, L. R., 9 Eq. 270.

of the broker to decide whether the directors were or were not exceeding their powers; and, moreover, the transaction was concluded and the money paid; so that the only remedy of the shareholders should be to require the directors personally to refund it. This decision was, however, reversed on appeal.[1] The transaction was held to be wholly and totally void; the broker had dealt with the directors as agents of the company; the directors were bound to act within the scope of their authority; and the broker was bound to know that they were acting ultra vires. The proof was, therefore, disallowed, and it seems that even if the money had been actually paid over to the broker by the directors he would have been liable to refund it.[2]

Acceptance of order.

There is clearly no duty cast upon a broker to accept every order that may be sent to him. What would amount to an acceptance must depend upon the circumstances of each individual case; and no doubt where there have been previous dealings between the parties, and the address of the principal is known to the broker, very slight delay in declining the order would be evidence of its acceptance. It is customarily understood that an order given to a broker authorizes him to execute any portion of it, whether he accepts it to that extent only, or finds himself unable to execute the rest.

Implied contract of indemnity.

Having accepted the order, the broker becomes the agent of the principal, and all the ordinary and general principles of the law of agency apply as between them; although, in the Stock Exchange, as we shall see hereafter, this agency is not recognized and the broker deals as a principal. There is, accordingly, a request implied by the principal to the

[1] L. R., 5 Ch. 444.

[2] For case of an illegal company, see *Josephs* v. *Pebrer*, 3 B. & C. 639.

broker, that he shall discharge on his behalf any liability necessarily[1] incurred in entering into contracts as his agent according to the rules of the Stock Exchange (unless the rules be illegal or wholly unreasonable). Any amount so paid becomes a debt due by the principal to the broker, and there is an implied contract by the principal to repay it, and to indemnify the broker against any loss which, by the course of business, he may be compelled to pay; provided, of course, that it has been incurred without any default on the part of the broker himself.

Child v. *Morley.*

This has been established by a long series of cases, of which the earliest seems to be Child *v.* Morley,[2] where the principal had refused to accept a bargain made by his authority, and the broker had, in accordance with the rules, been obliged to pay the difference due on a buying in against him on the Stock Exchange. The broker declared in assumpsit for money paid to the use of the principal, and it is true that he failed to recover in that form of action, yet the Court expressed a strong opinion that the broker ought to have a remedy; and this case was afterwards said by Bosanquet, J., in Young *v.* Cole,[3] to have established the principle, that the client was bound to reimburse the broker what he was thus compelled to pay.

Young v. *Cole.*

Young *v.* Cole[3] was an action brought by a broker against his employer to recover the proceeds of some Guatemala bonds which he had sold for him in the market. The bonds, after being a short time in the purchaser's possession, were found to be unmarketable owing to their want of stamps, and no one could

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[1] See *Clegg* v. *Townshend*, 16 L. T., N. S. 180, where the costs of defending a virtually undefended action on behalf of the principal, were held not to be recoverable.

[2] 8 T. R. 610.

[3] 3 Bing. N. C. 724.

be found in this country who had authority to stamp them. Upon this being disclosed to the broker, he took them back and reimbursed the purchaser without communicating with the defendant. It was held that the broker was entitled to recover the amount he had handed to his principal, not on the ground of a breach of warranty by the principal, but on the ground that the consideration on which it had been handed over had failed, the defendant having delivered something which, though resembling the article contracted to be sold, was of no value, and that the repayment made by the broker to the purchaser was necessary, according to the custom of the Stock Exchange.

Sutton v. Tatham.

This was followed by Sutton *v.* Tatham,[1] where a principal had instructed his broker to sell 250 shares in a company. The sale was effected on the following day, and afterwards, during that day, the principal called on his broker to inform him that he had made a mistake, that he had only 50 shares, and only wished to sell that number. The purchaser declined to accede to the request of the broker and cancel the bargain, and, according to the rule, bought in 200 shares on settling day against him. The broker repaid the loss and commission consequent on the buying in, and was held entitled to recover the amount in an action against the principal. In this case the principal was proved to have known of the rule in question; but in a subsequent case, Bayliffe *v.* Butterworth,[2] where a broker succeeded in an action brought under very similar circumstances, there was some evidence at the trial upon which the jury might have found that the principal was cognizant of the rule, but the point was not raised until the case came

Bayliffe v. Butterworth.

[1] 10 A. & E. 27.

[2] 1 Ex. 425.

before the Court in banc, where they did not therefore consider it necessary to decide it, but nevertheless expressed a strong opinion that such knowledge is immaterial.

Pollock v. Stables.

The decision in Bayliffe *v.* Butterworth was afterwards approved of and acted upon in Pollock *v.* Stables,[1] where a principal was unable to pay, on settling day, for shares which he had instructed his broker to buy. The vendor sold out, the broker paid the difference, and recovered it in this action from the principal, although it did not distinctly appear whether or not the principal was acquainted with the custom, nor was it shown that he received any notice of the vendor's intention to sell out.

Bayley v. Wilkins.

Bayley *v.* Wilkins[2] was an action brought by a broker against his principal under the following circumstances. The principal had employed the broker to buy certain shares for him, upon which a call had been made, but was not then payable. The seller being obliged to pay this call in order to become entitled to transfer the shares, the broker repaid the amount to the seller, and claimed it in this action from the principal, who resisted on the ground that he was ignorant of the fact of a call having been made at the time he contracted to buy the shares. The Court held that, the object of the purchaser being to obtain the shares with all the responsibilities that legally attached to them, he was liable to pay to the broker any sum beyond the stipulated price which the regulations of the company subjected them to.

Taylor v. Stray.

Again, in the case of Taylor *v.* Stray,[3] the same principle is illustrated. A broker had bought for his

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[1] 12 Q. B. 765.
[2] 7 C. B. 886.
[3] 2 C. B., N. S. 175.

principal some shares in a bank which subsequently, but before settling day, stopped payment, whereupon the directors refused nearly all applications made to them to allow transfers of shares. The broker received a notice from his principal's solicitor not to pay the purchase-money, but stamped transfers and certificates were handed to him by the seller, and he was obliged to pay. On action brought to recover the amount from his principal, it was held that although if there had been an absolute refusal on the part of the directors to recognize these particular transfers, and if that had been known to the broker at the time he paid the money, whatever the reason for the refusal might have been, then the subsequent payment might have been a payment by the broker in his own wrong; yet in this case the broker had acted rightly in making himself personally responsible for the payment of the money at a stage preceding that on which the consent of the directors could be asked for, and that, therefore, he was entitled to call upon his principal to reimburse him.[1]

Chapman v. *Shepherd.*

This case was followed in Chapman *v.* Shepherd, and Whitehead *v.* Izod,[2] where the circumstances were practically the same as in Taylor *v.* Stray, with the exception that a petition for winding-up the company under the Companies Act of 1862, was presented also before the settling day. It was objected by the defendants that the transactions were absolutely void under the 153rd section of that Act,[3] unless otherwise ordered by the Court, and that the transfers when tendered to the brokers were, therefore, mere waste paper, so that the brokers were not justified in paying over the purchase-money, and

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[1] See *Smith* v. *Lindo*, 5 C. B., N. S. 587.

[2] L. R., 2 C. P. 228.

[3] 25 & 26 Vict. c. 89, s. 153.

could not, therefore, recover against their principals. The Court decided that the statute did not avoid the contract; and Willes, J., put this test:—Could the buyer have insisted upon receiving the transfers and certificates under the circumstances which have occurred? It is clear that he could, because he would be at liberty to make an application to the Court that he might be declared a shareholder in the company; and, having this conditional right, he could not be allowed to object that the contract was void, before he had taken the step required to ascertain whether he could not be declared a shareholder. The Court, therefore, held that since the payments were made by the brokers before the contracts were thus ascertained to be void, they were recoverable in the actions. It is to be observed that, according to more recent authority, the non-registration under such circumstances would not render the contracts void, and the question of the broker's right to recover would present less difficulty.

Biederman v. Stone.

Very shortly afterwards came the case of Biederman *v.* Stone,[1] which very much resembled the two preceding ones. The action was by a broker against his principal for indemnity against loss incurred in consequence of the refusal by the principal to execute a transfer of certain shares which the broker had sold under his instructions, and which were in due course "bought in" on the failure of the broker to deliver. This case differed from the preceding ones in this, that the company had to the knowledge of all parties commenced winding-up voluntarily before the transaction was entered into. The defendant here relied on the 131st section of the Companies Act of 1862,[2] which provides that all transfers taking place

[1] L. R., 2 C. P. 506.

[2] 25 & 26 Vict. c. 89, s. 131.

after the commencement of the winding-up are void, unless made with the sanction of the liquidators, and he refused to execute a transfer unless the purchaser of the shares first obtained their sanction. The Court held that the seller was bound to execute the transfer quantum valeat, and was therefore liable to indemnify the broker for the loss consequent on his refusal to execute.

This implied promise to indemnify cannot be relied upon where the employment of the broker has been against public policy, or illegal at common law, or contrary to some statute, as in some of the cases discussed under the Gaming Act and Leeman's Act, in the preceding chapter.

Nor can the contract of indemnity be interpreted to extend to liabilities incurred by the broker in consequence of rules made by the Stock Exchange under such circumstances as that the principal cannot be presumed to have known them, or to have contracted with reference to them. This was one ground of the decision in Westropp *v.* Solomon,[1] where certain share certificates had been sold by a broker for his principal to a jobber, but, after the proceeds had been received by the principal, they were discovered to be forgeries. The broker, in common with all other sellers of similar spurious shares, was called upon by a resolution of the Committee to deliver genuine shares in exchange, or, until such should be procured, to pay for the same at a fixed rate, which happened to be considerably in excess of the price at which the spurious ones had been sold. This resolution was, as the Court observed, probably passed with reference to sales of shares generally, whereas here the principal had instructed his broker to sell specific certificates.

Westropp v. *Solomon.*

[1] 8 C. B. 345.

On action brought by the broker against his principal for indemnity, it was held that the resolution of the Committee, made after the transaction was completed, could not affect the principal, although it were binding on members of the Stock Exchange, and that, therefore, the utmost that could be recovered in the action was the actual amount which had been received by the principal.[1]

Telegrams.

Nor can this implied promise to indemnify be extended to liabilities incurred outside the limits of the agency. Such a case might arise, for instance, where telegraphic instructions have been inaccurately transmitted. In the absence of express stipulation, or of negligence on the part of the sender of a message, there is no responsibility on him in respect of mistakes in the transmission,[2] and the extent of the agency would therefore depend upon the instructions as actually given, and not as received.

Speculative business for clerks.

By Rule 57 brokers are cautioned against transacting speculative business for clerks in public or private establishments, without the knowledge of their employers. Members disregarding this caution are liable to be dealt with in such manner as the Committee may deem advisable. The essence of this most salutary rule is, that brokers must obtain the consent of the employers before doing any such business for a clerk or an official. Under the category of clerks the Committee include bank managers, secretaries, and mercantile employés of all kinds, and by their decisions they lay down the principle that the higher the position of the official the greater the obligation upon the broker to obtain the sanction of the employer. The rule is of course designed for the

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[1] See *Young* v. *Cole*, 3 Bing. N. C. 724.

[2] *Henkel* v. *Pape*, L. R., 6 Ex. 7.

protection of employers, and any case of its infringement should be brought before the Committee by employers.

Execution of the order.

Having received and accepted the order to buy or sell, the duty of the broker is, to use due and reasonable diligence in endeavouring to carry it out; this is the extent of the implied contract, there being, of course, no absolute undertaking on his part to carry it out at all events,[1] for there may be no market for the particular securities in question.

In the case of Lamert *v.* Heath,[2] a broker was instructed to buy for his principal some "Kentish Coast Railway Scrip," and he accordingly bought in the market the only scrip of that name, but which afterwards was denied by the directors to be genuine, on the ground that it had been issued by the secretary of the company without their authority. On action brought by the principal to recover the amount from his broker, the only question left to the jury at the trial was, whether the scrip was genuine or not; but the Court of Exchequer held that the proper question for the jury was, whether the plaintiff got what he contracted to buy,[3] and a new trial was granted accordingly.

Negligence on the part of a broker may also render him liable to an action at the suit of the person with whom he has contracted on behalf of his principal, by virtue of the rule laid down in Collen *v.* Wright,[4] that a person professing to contract as agent for another, impliedly, if not expressly, undertakes to or promises the person who enters into such contract

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[1] *Fletcher* v. *Marshall*, 15 M. & W. 755.

[2] 15 M. & W. 486.

[3] See *Mitchell* v. *Newhall*, 15 M. & W. 308, ante, p. 36; *Tempest* v. *Kilner*, 3 C. B. 253; *Hunt* v. *Gunn*, 13 C. B. N. S. 227.

[4] 8 E. & B. 647.

upon the faith of the professed agent being duly authorized, that the authority which he professes to have does in point of fact exist. In the usual case where this person is a jobber the rules of the Stock Exchange meet the case by treating the broker as a principal; but in law the position is slightly different in respect of the method of estimating damages. The question was recently argued in the Court of Appeal,[1] in a case where brokers had by mistake applied for and obtained an allotment of shares for their principal in a company other than that in which he had instructed them to apply. The company had at the time a large number of shares unallotted and unsaleable. The company was soon wound up, and it was held that, upon the name of their principal being removed by order from the list of contributories, the brokers were liable to indemnify the company for what they lost by reason of their loss of the contract; that is to say, in that particular case, all the money which became due to the company upon the allotment, because the intended allottee was solvent, and the shares worthless. But it was considered by the Court to be in each case a question of fact whether there would be anything to set off upon those grounds.

Broker must act at arm's length.

The broker is again bound by the general rule respecting all agencies, which forbids the agent to take to himself that which he is instructed to sell and give credit for the amount of the price, or conversely to be himself the seller of that which he is instructed to buy on behalf of his principal, unless he deals with him fully and fairly at arm's length, and makes a full disclosure of everything he knows concerning the matter. If he do make this disclosure, the relation of principal and agent be-

[1] *Ex parte Panmure*, 24 Ch. D. 367.

tween them is determined so far as that transaction is concerned. If he do not, he cannot truly say that by dealing with himself he has carried out the instructions of his principal, and the delivery of a contract note would therefore be an untrue representation upon which the principal could recover the money paid to the broker.[1] The principal has, moreover, the right to choose whether he will adopt the bargain and claim for himself any benefit that the broker may have made out of it, or whether he will repudiate the transaction altogether and claim the return of his money.[2] The rule is the same, although it be made to appear that no advantage has been gained, or intended to be gained, by the broker; because, although one may see in a particular case that this is so, yet it is utterly impossible in the majority of cases to examine upon evidence whether advantage has or has not been gained by him.

Brookman v. *Rothschild.*

A transaction of this nature was set aside in the celebrated case of Brookman *v.* Rothschild.[3] The plaintiff wrote to the defendant for advice respecting some investments, and the defendant advised him to sell certain French rentes, and to buy Prussian bonds. Further correspondence ensued, and in the result, according to the view taken by the Courts, the defendant became the plaintiff's agent to carry out these suggestions; and, therefore, practically, the relationship between them was the same as that between principal and broker. The defendant being a very large dealer in French rentes caused them to be sold to himself, without the plaintiff's knowledge, but at the market price; and further, being the con-

[1] *Wilson* v. *Short*, 6 Hare, 366; *Ex parte Dyster*, 2 Rose, 349; *Robinson* v. *Mollett*, L. R., 7 H. L. 802.

[2] See notes to *Fox* v. *Mackreth*, 1 L. C., Eq. 123.

[3] 3 Sim. 153, and 5 Bli., N. S. 165, S. C. in H. L.

tractor for the Prussian loan, and having a large number of these bonds in his hands, he sold them himself at the market price of the day to the plaintiff, but transmitted accounts to him in which it did not appear that he had not bought the bonds from third persons. No particular bonds were appropriated to the plaintiff, it being part of the agreement that the bonds were to be deposited with the defendant as security for the purchase-money. Many more dealings of the same nature took place, and ultimately a large balance was paid by plaintiff to defendant. Four years afterwards the plaintiff discovered that his French rentes had been purchased by the defendant, and that no Prussian bonds had ever been specifically appropriated to him; he therefore filed his bill, and succeeded in obtaining a decree that all the transactions be set aside, and an account taken. This was affirmed on appeal to the House of Lords.[1]

So in Gillett *v.* Peppercorne,[2] where a principal instructed his brokers to purchase some canal shares, and they bought them from a person who, though ostensibly owner, was only a trustee for the brokers, the sale was set aside with costs.[3]

In all such cases the agent is bound to disclose the exact nature of his interest, if any, in the transaction; it is not enough merely to disclose that he has an interest, so as to put the principal upon inquiry. The burden of proving that a full disclosure has been made lies on the agent, and is not discharged by his merely swearing that it was made, if his

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[1] See also *Kimber* v. *Barber*, L. R., 8 Ch. 56.

[2] 3 Beav. 78.

[3] See also *Bank of Bengal* v. *Macleod*, 7 Moo. P. C. C. 35; *Kimber* v. *Barber*, L. R., 8 Ch. 56.

evidence is contradicted by the principal and not corroborated.[1]

Damages.

It is difficult to lay down a general principle on which to assess damages in such cases, for each must to some extent depend upon its own circumstances. In general, if a buyer has been defrauded and is in a condition to return the thing bought, he is entitled to do so on discovery of the fraud, and to receive back the price. Similarly, if the seller of securities has been defrauded, he may do all that is reasonable to replace the security sold, and claim to be indemnified. But where there has been a subsequent depreciation in value, or where a buyer, as in the case of Waddell *v.* Blockey,[2] has parted with the securities at a loss before discovering the fraud, the question becomes more difficult. In the case cited, the defendant, a broker, had sold rupee paper of his own to the plaintiff in pretended execution of the plaintiff's orders to buy, and the plaintiff had suffered heavy loss on a re-sale after a lapse of six months. Subsequently the nature of the transaction was discovered, and judgment was entered for the plaintiff for the full amount of his loss. On appeal it was held that this loss, not being due simply to the purchase by the plaintiff, but to the further fact of his having elected to retain it after it began to fall in price, was not recoverable.[3] On behalf of the defendant, it was argued that the true measure of damages was the difference between the price paid and the real value of the paper on the day of purchase; but judgment was finally directed to be entered for the amount of

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[1] *Dunne* v. *English*, L. R., 18 Eq. 524.

[2] 4 Q. B. D. 678.

[3] But see *Twycross* v. *Grant*, 2 C. P. D. 469, where the shares bought were worthless owing to inherent defects.

loss which would have accrued if the paper had been resold immediately, including, of course, any commissions or incidental necessary expenses.

Duration of agency.

How long the order given to the broker will remain in force must depend upon the circumstances in each case. When a principal is in the habit of giving limits or discretionary orders to his broker, an understanding is established between them as to the duration of such orders, and the broker knows whether to treat them as for the current account, or for the day, or for immediate execution only. Apart from any such clear understanding, if the principal neglects to specify how long his order is to be in force, the broker must exercise his discretion. If it is not practicable to procure explicit instructions from his principal there is authority for saying that if a limit is given, or if the security is of the non-current class, the broker's authority would continue[1] until countermanded; but if an order be given to deal in a current security, a jury would be at liberty to take into consideration the usage of the Stock Exchange to deal for the ensuing settling day, and to find that, when that day arrived, a reasonable time had elapsed for carrying out the order, and that the broker's authority was at an end.[2] His authority continues, however, in the absence of any special understanding to the contrary, until settling day, unless countermanded, but may, of course, be countermanded by the principal at any time before the broker has acted upon it so as to alter his position.

When principal bound.

We will suppose then that, while the order is in

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[1] See *Fenwick* v. *Buck*, 19 W. R. 597.

[2] *Fletcher* v. *Marshall*, 15 M. & W. 755, post, p. 44; and see *Maxted* v. *Paine*, L. R., 4 Ex. 81; *Maxted* v. *Morris*, 21 L. T., N. S. 535.

force, the broker enters the market and makes the bargain. He then becomes responsible to the dealer; he enters the bargain in his own books, and his principal is, upon the foregoing authorities, bound to indemnify him, and is no longer at liberty to countermand or withdraw. In the case of Massey *v.* Allen,[1] the question was discussed how far entries in brokers' books are admissible in evidence as between other parties after the death of the broker. The action was brought to establish the plaintiff's right to an indemnity from the defendant in respect of some shares which the plaintiff alleged had been bought for the defendant through his own brokers. The plaintiff tendered in evidence an entry in the day-book of the firm of brokers in the handwriting of a deceased partner, made by him in the ordinary course of business at the time of the purchase as a memorandum of the transaction. It was also proved that the defendant's ledger account was made up from the day-book. It was held that the day-book was not admissible on the ground of being against the pecuniary interest of the person making it, because, according to the turn of the market, it might have been in his favour; nor was it admissible as made in the ordinary course of business, because it was not made in the performance of any duty owing to the defendant by the broker.

Admissibility in evidence of entries in brokers' books.

The principal, being thus bound, is entitled to be informed immediately of what has been done on his behalf; for although the broker is in theory bound to the principal from the moment when he has made the bargain as his agent, and is, as we have seen, liable to account to him for it, yet practically, in the absence of an admission by the broker that it has

When broker bound.

[1] 13 Ch. D. 558.

been effected, the principal would in the majority of cases find it impossible to enforce his rights. If delay were allowed in thus communicating with the principal, an opportunity would be afforded to a dishonest broker to avail himself of the bargain made for his principal, and, if prices tended favourably, to take to it himself, making a second bargain at a subsequent period, and treating the later one as made for his principal. If this were discovered by the principal, he could of course claim the profit made; but how rarely could detection be possible?

Contract note.

It is not necessary that this information should be conveyed in writing, for a contract for the sale of Stock Exchange securities is not within the Statute of Frauds;[1] but it is usual for the broker to send a contract note to his principal. This note must not be confounded in its effect with the contract note drawn up in an ordinary transaction by a broker who is acting as agent for both parties, and where the contract is for goods, wares, or merchandise so as to require a memorandum in writing; indeed, it is unfortunate that the term "broker" should have come to be applied at all to this kind of agency. The stockbroker acts as an agent for his principal only, and is obliged by the rules to deal with the jobber as though he were himself a principal; so that the note is really nothing more than a letter of advice informing the principal of what has been done by his

[1] *Humble* v. *Mitchell*, 11 A. & E. 205. It is conceivable that a company owning land, and not governed by the Companies Clauses Act, 1845, or by the Companies Act, 1862, might be so constituted as to give to its individual shareholders not a mere money interest in the assets, but an interest in the land itself, in which case the contract might fall within the 4th section of the Statute of Frauds, and so require a written memorandum or note signed by the party to be charged therewith, or by his agent.

agent. It is a formal admission on which the principal may rely if he should require to enforce his claim against the broker.[1]

Name of jobber.

The note should specify the day for delivery and settlement. It may also specify the jobber with whom the bargain has been made, a practice which, for obvious reasons, is desirable. In the first place, the mention of the name is a guarantee to the principal that his business has been done in a regular manner, and at the price named, and the principal can, if he chooses, insist on being told the name. If he suspects irregularity, the means of checking are thus placed within his reach. Again, in case the broker should default, it enables the principal, without delay and inquiry, to require the jobber to fulfil the contract.[2] It has been very commonly supposed that the mention of the jobber's name is necessary to relieve the broker from responsibility for the due carrying out of the transaction; but it is submitted that, in the absence of negligence, no responsibility attaches to him, even if no name is given, provided the contract has been duly made in the House. There is no presumption of law which places the broker in the position of a del credere agent, and all attempts to prove such a custom at nisi prius have failed to show anything sufficiently general to raise such a presumption of fact.[3]

Del credere agency.

But where a principal declines "to take names," and in consequence the broker consents to withhold them, a special contract with the principal may be inferred from the broker's assent under which a del credere agency would be established.

[1] Conf. *Magee* v. *Atkinson*, 2 M. & W. 440.

[2] See p. 65.

[3] As to what is sufficient evidence to establish a custom, see *Mackenzie* v. *Dunlop*, 3 Macq., H. L. C. 22; *Dent* v. *Nickalls*, 22 W. R. 218; *Abbott* v. *Bates*, 43 L. J., C. P. 150.

When a broker, instead of dealing with a jobber, deals with another principal, perhaps receiving a further commission from the latter, the case is different, and the broker, in departing (we assume without fraud or detriment to the interests of his principal) from what may be considered to be his implied instructions to deal in the House, is taken to do so entirely on his own responsibility.

Stamp required.

It is required by the Stamp Act,[1] that "any note, memorandum, or writing commonly called a contract note, or by whatever name the same may be designated, for or relating to the sale or purchase of any stock or marketable security of the value of 5*l.* or upwards," shall bear a penny stamp. The stamp may be adhesive, and must be cancelled by the person by whom the note is first executed. The penalty for omission is 20*l.*; and further, the broker has no legal claim to any charge for commission unless the contract note is duly stamped; nor would the unstamped note be admissible in evidence in any court of civil judicature.[2]

Commission.

The broker's charge for commission is also inserted in the contract note. In most of the local Stock Exchanges the amount of broker's commission is regulated by a fixed tariff, but in London the charge varies slightly among different brokers, the Committee considering that all such charges should be left as matter for arrangement between them and their principals. It is usually $\frac{1}{8}$th per cent. on British and foreign funds; $\frac{1}{4}$ per cent. on American and colonial securities; on railway and other registered stocks $\frac{1}{2}$ per cent. on the consideration money; while on shares the charge is usually on a scale from one shilling or less per share

[1] 33 & 34 Vict. c. 97, s. 69. [2] Ib. s. 16.

on shares under 5*l.*, up to ten shillings per cent. on the consideration money where the shares are above 50*l.* The commission is earned and payable so soon as the broker has carried out the transaction according to the instructions of his principal, although the bargain should, owing to any circumstances independent of him, fail to be completed by the principal or other parties.[1]

The broker's claim to commission has also been sanctioned in administration suits, where the amount is allowed to executors on passing their accounts.[2] His right to commission is conditional on his being duly licensed.[3] But by the recent statute of 1884,[4] this condition will cease to exist in September, 1886.

On gaming contracts.

Under Sir John Barnard's Act it was not possible for a broker to recover from his principal for work done or for money actually laid out for him upon transactions which were by way of gaming, because he could not establish his right except by virtue of having done something which was forbidden under a penalty, and therefore illegal.[5] Now, however, these contracts are no longer illegal, but voidable only;[6] and therefore there is nothing to prevent a broker from recovering money paid in respect of them at the request of his principal,[7] which request would always be implied in ordinary Stock Exchange transactions. And in the case of Rosewarne *v.* Billing,[8] the Court held that it made no difference if the broker knew

[1] See the cases, ante, pp. 40—44, in all of which commission was recovered by the brokers.

[2] *Jones* v. *Powell*, 6 Beav. 488; *Davenport* v. *Powell*, 14 Sim. 275.

[3] See ante, p. 7; *Cope* v. *Rowlands*, 2 M. & W. 149.

[4] 47 Vict. c. 3.

[5] *Wells* v. *Porter*, 2 B. N. C. 278.

[6] 8 & 9 Vict. c. 109, s. 18, p. 20.

[7] *Jessopp* v. *Lutwyche*, 10 Ex. 614; *Knight* v. *Cambers*, 15 C. B. 562; and see *Knight* v. *Fitch*, ib. 566.

[8] 15 C. B., N. S. 316.

that the contract entered into was void under the statute; for if one man requests another to make a wagering contract on his account, and to pay the loss if loss happens, there is a continuing request to pay until revoked. Erle, C. J., in giving judgment, expressed a doubt whether revocation would be possible in the case of a contract on the Stock Exchange, where the broker becomes personally liable to pay so soon as the contract is made; but probably he would not have doubted if the question had really presented itself for decision; for the fundamental principle upon which such questions depend is, that there is an implied contract on the part of every person who employs a broker to act for him on the Stock Exchange to indemnify the broker against all liability necessarily incurred in the ordinary course of his employment. In fact, the question whether or not any contract is void in this respect, is one which could only be raised between the ultimate contracting parties.

When payment due from principal.

It is usual for the principal to hand to the broker any money that may be due to him on or before the day for which the purchase has been made, so as to keep the broker in funds to meet the payments on the Stock Exchange, for which he has, by the rules, rendered himself personally liable. The purchaser of securities cannot, however, be compelled to entrust money to his broker in this manner, nor can he compel his broker to advance it out of his own pocket, for this may, perhaps, be impossible. If, owing to want of confidence, such a difficulty should arise, it may be, and is usually, met by the principal handing to the broker a conditional order on his bankers to pay the amount on receipt of the securities or of the transfer deeds executed by the transferor. This is a difficulty not unfrequently felt

by trustees who may, by a slight departure from the usual course of business, expose themselves to the risk of personal liability for the consequences. It has, however, recently been held in the House of Lords,[1] that a trustee, in buying Stock Exchange securities on behalf of his cestui que trust, is justified in employing a competent broker and in paying the purchase-money to him without further security.

Money entrusted to broker.

If money is entrusted by the principal into the hands of his broker for investment, the relationship created between them is not merely that of creditor and debtor, and must not be treated as analogous to that between a banker and his customer, but the money is considered as having been entrusted by the principal to his agent in a fiduciary character to be applied in a particular way; consequently, if the broker stops payment with such money in his hands, the principal is entitled to follow the money, and, so far as it can be traced, to claim the return of it;[2] though no doubt the practical difficulty of tracing money if once paid by the broker into his banking account will generally limit the remedy of the principal to his claim as a general creditor in the liquidation. This difficulty does not, of course, affect the legal right of the principal to the money, or to any securities or other property which can be shown to have been directly purchased with it.

Fletcher v. *Marshall.*

In the case of Fletcher *v.* Marshall,[3] a principal had lodged money in the hands of his broker to procure certain shares; the broker immediately made a bargain for the purchase on the Manchester Stock

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[1] *Speight* v. *Gaunt*, 9 App. Cas. 1.

[2] *Taylor* v. *Plumer*, 3 M. & S. 562; *Ex parte Cooke*, 4 Ch. D. 123, and cases cited in *Ex parte Dale*, 11 Ch. D. 772.

[3] 15 M. & W. 755.

Exchange, in accordance with his instructions, and forwarded a bought note to the principal; but nine days after the next settling day (and twenty-four days after the order was given), when the principal demanded his shares, he was informed that although scrip had been issued, none had yet been forwarded to the Exchange, so that they were unable to obtain delivery of it. The principal accordingly demanded the return of his money, and it was held that he had unquestionably a right to countermand the application of his money which was still in the broker's hands, the original contract being at an end on the failure to deliver scrip within a reasonable time. In this case the bought note did not specify any day for delivery, but the jury found that a reasonable time had elapsed for that purpose, proceeding no doubt upon the ground that the settling day was the proper day for delivery, and the Court considered, perhaps on hardly sufficient grounds, that delivery on that day was an essential part of the contract. The case illustrates the relationship between principal and broker; but it is, happily, not probable that such a verdict should be given in any case arising out of a transaction on the London Stock Exchange, for it is usual for the Committee to fix special settling days for the scrip of new issues, and the broker usually draws up the bought note accordingly. It may be inferred from the above case, that where a broker has in the usual manner specified on the bought note a day for delivery, and neglects on that day to enforce delivery against the selling jobber, or to avail himself of his right to buy in against him, then the principal would, independently of the rules of the Stock Exchange, be entitled on any subsequent day to instruct his broker to withdraw from the contract, provided the latter had not altered his own position

by payment of the purchase-money. By the rules of the Stock Exchange, however, the broker's position is altered from the first by his liability to the jobber from which he could only be freed by a resolution of the Committee, and withdrawal would not be possible. To avoid the possibility of such a dispute as arose in Fletcher *v.* Marshall, the broker may, and, where the security is of the non-current class, frequently does, specify on the bought note that the purchase is "for delivery," instead of for a day certain.

A few months after the decision in Fletcher *v.* Marshall, an attempt was made by a principal to repudiate a similar contract made on the Liverpool Stock Exchange, and to demand back his purchase-money from the broker on account of non-delivery of scrip on the day specified in the bought note. The cause of the delay was that the scrip had been called in by the directors of the company in the interval between the purchase and the day fixed for delivery for the purpose of registration and of re-issuing sealed certificates in lieu thereof. This being a circumstance over which neither party had any control, the case was decided in the broker's favour, and the bought note was interpreted to be a contract for delivery of scrip on the day fixed, if not then called in, otherwise of share certificates as soon as they should be issued.[1]

Insolvency of principal.

If the principal should by reason of insolvency, death or otherwise, become unable to receive and pay for or deliver the securities which he has ordered to be purchased or sold, and if no one is authorized to deal with them on his behalf, the broker may pro-

[1] *M'Ewen* v. *Woods*, 11 Q. B. 13; see *Bowlby* v. *Bell*, 3 Q. B. 284, post, p. 63.

ceed at the earliest practicable moment to close the account and claim for the differences against the estate of the principal. The meaning of the word "insolvency" in this rule is not very clearly defined, and can only mean such inability on the part of the principal to pay his debts in the ordinary course of business as that it becomes manifest that the broker could not depend on him for protection against any loss that might occur on the account.[1]

Where the principal is known to be in default to any member of the House, other members are forbidden by the rules of the Stock Exchange to transact business for him until he has made a satisfactory arrangement with his creditors.

Closing of account by broker.

In Scrimgeour's case,[2] a suggestion was thrown out by the Court that if any loss should accrue to the defaulting principal in consequence of his account being closed by his broker before the settling day, that is to say, if by that day prices should tend in his favour, this might possibly be ground for a counter-claim by him against the broker. This point was, however, not decided, nor did it even arise in the case. It is submitted that no such counter-claim would be allowed; for, although in the case of any other broker who, in the exercise of his own discretion, deals before the day fixed by his instructions, such a counter-claim would undoubtedly be good, yet on the Stock Exchange there is this distinction, that the broker is justified by the usage, and it would, therefore, be entirely contrary to the proposition stated above as to the broker being indemnified by his principal if such a counter-claim were admitted,

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[1] *Lacey* v. *Hill, Crowley's claim*, L. R., 18 Eq. 182; *Scrimgeour's claim*, L. R., 8 Ch. 921.

[2] *Lacey* v. *Hill*, L. R., 8 Ch. 921.

which might render the broker personally liable to any extent for an error in judgment in selling securities which he has bought under the instructions of his principal, and as to the real value of which he may be, and indeed is presumed to be, entirely ignorant.

Where loss caused by fault of broker.

It follows, on the other hand, that where loss is caused by the fault of the broker, and not by reason of his having entered into the contracts which he was authorized to enter into by his principal, there is no such implied promise to indemnify. An illustration of this principle is to be found in the case of Bowlby *v.* Bell,[1] where a broker had been instructed to sell shares in a railway company which had been allotted to his principal, but the certificates for which were at the office of the company for registration pursuant to their act of incorporation. In consequence of delay at the office the principal was unable to deliver on the day fixed. It was understood between all the parties to the transaction that the shares were in for registration at the time, so that the contract could only be taken to be for registered shares, for the transfer of which a deed was required by the act of incorporation of the company. On non-delivery of the shares by the principal, they were bought in against the broker, who paid over the difference to the purchaser, notwithstanding a caution from his principal not to do so. It was held that this was a payment in his own wrong for which the broker could not recover, for he could not have been legally compelled by the purchaser to pay anything, inasmuch as no transfer deed had been tendered to him by the purchaser; this tender being

[1] 3 C. B. 284.

held to be a condition precedent to a right of action against the seller for non-delivery.[1] Here the sale had taken place on the Hull Stock Exchange, and the case is cited, not as an authority upon the question (which will be dealt with hereafter) of the necessity of the tender of a transfer deed on the part of the purchaser, but merely as an illustration of the principle above stated.

Insolvency of broker.

Again, in the case of Duncan *v.* Hill,[2] a firm of brokers had been instructed to buy certain shares, but were directed by their principal to carry them over to the next account day. This was done, a statement of account was furnished, and the difference ultimately paid by the principal. The firm were declared defaulters three days after the carrying over, and all their transactions were peremptorily closed in accordance with the rules of the Stock Exchange, their accounts being made up by the official assignees at the current prices of the day without communication with the principal. Prices in the meanwhile were going against him, so that on the closing of the brokers' accounts a further sum appeared to be due from him, which would have been considerably increased had the transaction not been closed until the following account day. On action brought by the brokers on behalf of their creditors the Court of Exchequer held[3] the principal liable to pay this further sum, on the ground that he had impliedly promised to complete the contract in accordance with the rules of the Stock Exchange, in all its incidents and with all its consequences, among which is the condition of immediate payment on default of the broker. It was considered to be only reasonable that

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[1] *Stephens* v. *De Medina*, 4 Q.B.422; but see post, p. 110.

[2] L. R., 8 Ex. 242.

[3] L. R., 6 Ex. 255.

the principal should be identified with the broker and subjected to the same liabilities in the performance of the contract. On appeal, however, the Exchequer Chamber reversed the decision,[1] and treated the question as one of indemnity, holding the principal not liable to indemnify the firm against a loss, which was practically brought on by their want of means to meet their other primary obligations, and not by reason of their having acted as his agents.

The decision would, in all probability, have been the other way had there been evidence to show that the default of the brokers was in any way caused by the action of their principal.[2]

Changing broker on insolvency.

If a broker is declared a defaulter his principal can at once go to the dealers with whom his contracts have been effected, and claim to complete with them on the due date; the authority of the Committee being invoked in case of dispute. It is, however, customary for convenience for the principal to employ another broker to do this for him; the jobber being then bound to keep the account open precisely in the same manner as if the contract had been made originally in its substituted form.[3]

Settlement.

When the account arrives it becomes the duty of the broker to use due diligence to secure the delivery of any security which he has bought for his principal, and to collect payment for securities sold. He may be made personally responsible for any damage accruing to his principal in consequence of any negligence in this respect;[4] if, for instance, he allows such time to elapse without enforcing completion as to release all intermediaries, and the principal suffers through default of the ultimate contracting party.

[1] L. R., 8 Ex. 242.
[2] *Crowley's case*, L. R., 18 Eq. 182.
[3] See also Ch. VI.
[4] Ante, p. 60.

But it does not necessarily follow that every delay in enforcing completion amounts to negligence. It may, in the discretion of the broker, be more to the interest of his principal, with reference to possible future dealings, to grant some indulgence, than to be unreasonably strict in enforcing the penalties for delay, especially in dealings in non-current securities.[1]

Inquiry as to sufficiency of transferee.

It seems to have been assumed by the Courts of law, in several cases arising out of the sale of shares in unlimited companies, or otherwise carrying liability, that it is the duty of the seller's broker to inquire into the sufficiency of the ultimate buyer, and his ability to indemnify the seller against future calls. This is, however, practically not the case, and probably no broker would undertake a responsibility of this nature, which might involve the most troublesome inquiries,—such, for example, as a search for the certificate of baptism of the transferee, to discover whether he were an infant.

Registration of transfer.

Nor can the broker be made responsible for the non-registration of the transfer of any shares which he has been instructed to buy. His duty is to pay the purchase-money to the seller on receipt of the documents of title, and all that he can then do is to obtain the signature of his principal, and to send in the instrument of transfer to the office of the company. If it should afterwards turn out that the transfer cannot for any reason be completed by registration, in some cases an action might accrue to the buyer, if he was not in fault himself, to recover back his money; but this action could not be against the broker, who has paid the money over in accordance with the practice of the Stock Exchange.[2]

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[1] See pp. 75 and 76.

[2] See *Taylor* v. *Stray*, 2 C. B., N. S. 195, per Willes, J., and ante, p. 42; and *Stray* v. *Russell*, 1 E. & E. 888.

After completion of transaction.

After the transaction is completed on the Stock Exchange, and the money, or the securities, as the case may be, are finally in the hands of the broker to be handed over to his principal, the rules and customs of the Stock Exchange cease to have any effect upon the relation of principal and broker, and the ordinary principles of law apply. The money is held by the broker, as we have seen,[1] in a fiduciary character, and, if ear-marked, may be followed as trust money. Thus, in a recent case of Pearson *v.* Scott,[2] it was attempted on the part of a broker to set up a custom that brokers were only bound to recognize the persons actually employing and instructing them to sell or purchase securities, and to obey the directions of those persons only as to the mode of payment and as to the application and disposal of the proceeds of sale, and to treat such persons alone as their principals. It was held by Fry, J., that such a custom could not possibly be upheld as reasonable. The facts in that case were these:—Four executors holding stock in their own names directed their solicitor to sell the stock. The solicitor, in the name of his firm, gave to a broker, whom the solicitor had employed in Stock Exchange speculations on his own account, directions to sell the stock. The stock was sold by the broker, and the transfer deeds forwarded by him to the solicitor, who returned them duly executed, with receipts for the purchase-money indorsed and signed by the four executors. The sale was completed, and the broker sent to the solicitor a cheque for part of the proceeds, and carried the balance on the transaction to the credit of the solicitor in the account between them, which account was afterwards settled by a payment made to the

[1] Ante, p. 59.

[2] 9 Ch. D. 198.

broker. It was held that, under the circumstances, the broker must be taken to have had notice that the shares were not the property of the solicitor, and that, though the solicitor had from the executors authority to receive the purchase-money, payment to him, by giving him credit in an account between them, was not sufficient to discharge the broker, who remained liable to the executors for the balance. Nor could the broker be entitled to assume that the solicitor gave the instructions in the character of equitable owner of the stock, without first having made some inquiry upon that point. In fact, a broker, who knows that he is paying an agent, must pay in such a manner as to facilitate the payment by the agent to his principal, that is to say, he must pay in cash, and not by a settlement of account between himself and the agent. But this rule would hardly apply where the agent is a banker, because, in the ordinary course of banking business, a payment to any customer by such an agent would be made by carrying the amount to the credit of his account, and this cannot be said to be facilitated by payment in cash by the broker.

Delivery of securities to principal.

The securities when bought are not necessarily identified as the particular stocks or shares ordered to be purchased, but remain the property of and in the disposition of the broker. It is not until the transaction is completed by payment by the principal and delivery of the securities, that the particular stock or shares become the specific subject of the bargain, or the property of the principal. When payment has been received from the principal in advance, it becomes the duty of the broker to deliver the securities immediately he receives them, or, if this be, as it usually is, impracticable, he may set them aside with the name of the principal attached, and hold them at his disposal.

Custody of securities.

It may perhaps be that it is no part of the regular business of a broker to retain securities of his principals for collection of coupons and so forth; yet this is so frequently done that the practice deserves some notice; and the question of what degree of responsibility is thereby assumed by the broker is not free from difficulty. It is clear that he is in any case liable to his principal for "gross negligence," as it has been generally called. But if a man gratuitously undertakes to do a thing to the best of his skill, when his situation or profession is such as to imply skill, an omission of that skill is imputable to him as gross negligence.[1] Upon this ground it may be that an action would lie against a broker for neglect to cash the coupons of bonds held by him in safe custody, if any damage were caused thereby; but for loss of bonds by reason of theft or ordinary negligence he would not be liable so long as the bailment is strictly gratuitous.[2] Where some act is to be done, and is agreed to be done in connection with the deposit, he is bound to use such skill as he is shown to possess; where the deposit is merely for safe custody he is bound to use that ordinary diligence which men of his position generally exercise about their own affairs.

Gratuitous bailee.

Bailee for reward.

The responsibility of the broker is much larger when the deposit is not gratuitous. In this case, in the event of a loss of bonds, he would only escape liability by showing that it occurred through no want of ordinary care on his part; while for damage resulting from negligence in collection of coupons and the like he would be clearly liable. No charge

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[1] Per Lord Loughborough in *Shiells* v. *Blackburne*, 1 H. Bl. 158.

[2] *Giblin* v. *McMullen*, L. R., 2 P. C. 317.

is usually made by brokers for custody of securities, but a commission is sometimes charged for the trouble of collecting dividends. In the case of a deposit of securities with a bank this charge of commission is enough to constitute the bank a bailee for reward of the securities themselves, so as to render them liable for their loss by means of forgery by the manager of the bank. This was decided in Johnston's claim in the winding-up of the United Service Company,[1] who had been the claimant's bankers. He had deposited with them some stock certificates of railway companies and other documents, some with coupons, some without. The company, in consideration of a very small commission, undertook his banking account, and were authorized to receive the dividends on those shares and to collect the coupons as and when they became due. The manager of the bank abstracted some of the certificates, sold the stock, and forged the transfers. The possession of the abstracted certificates was not essential to the collection of the money which the bank was authorized to collect, yet it appeared to the Court that they came into the custody of the company in the ordinary course of their business as bankers, and that they were deposited with the bank by a customer of the bank under such circumstances as would have entitled the bank to a lien upon them for their general banking account. These considerations were held sufficient to fix the bank with liability; and upon similar considerations must depend the question of a broker's liability for negligence in the custody of securities. It must not, however, be assumed that where no charge is made the bailment is necessarily gratuitous. It might be argued that the securities

[1] L. R., 6 Ch. 212.

remain in the custody of the broker under the original employment to purchase them, and in so far connected with that employment as to be covered by the original commission charged; or again, that the mere collection of coupons is a sufficient advantage to the broker to constitute him a bailee for reward, even although the charge made be inadequate to remunerate him for trouble of collection, apart altogether from any indirect compensation for custody.

Reference of complaint to Committee.

We have hitherto treated the relationship existing between principal and broker from a legal point of view. But a person, though not a member of the Stock Exchange, may, if he so desires, refer to the Committee any complaint against a member; and if it is one which is fitting for their adjudication, it will be decided summarily by them in the same manner as if both parties were members, and in accordance, therefore, with the principles described in the following chapter. On referring a complaint to the Committee, a non-member will be required to sign the form of reference to the Committee set out in the Appendix under Rule 54.

CHAPTER III.

BROKER AND JOBBER.

Contract between broker and jobber.

We now pass to the consideration of the contract between the broker and the jobber. The Stock Exchange does not recognize in its dealings any parties other than its own members; therefore, whatever be the instructions given to the broker by his principal, this bargain made with the jobber must be fulfilled according to the rules, regulations and usages of the Stock Exchange; if any special arrangement has been made between the broker and his principal, or any additional liability incurred by the broker, the responsibility rests with him, since he cannot call upon the jobber to deal otherwise than according to those rules. Nor would the question arise between broker and jobber as to whether any rule or usage was reasonable or not; for these usages are founded on the general convenience of all persons engaged in business on the Stock Exchange, and could not, therefore, as regards those persons, be said to be unreasonable.[1]

Legal proceedings by members.

Moreover, it is a rule of the Exchange that no member may attempt to enforce by law any claim arising out of Stock Exchange transactions against a member or defaulter, or against the principal of a member or defaulter, without the consent of such member, of the creditors of the defaulter, or of the Committee. A member can of course have resort to the law if he chooses, in defiance of this rule; but

[1] *Grissell* v. *Bristowe*, L. R., 4 C. P. 36.

as this would render him liable to expulsion from the House, it very rarely, if ever, happens; nor is it likely that the Committee would, unless for the sake of testing the law, or, perhaps, under altogether exceptional circumstances, consent to refer to the decision of the Courts any dispute arising out of transactions with which they are themselves so peculiarly competent to deal. We must, therefore, in considering the relationship which arises between broker and jobber, be guided solely by the rules and regulations adopted by the Committee for General Purposes of the Stock Exchange.

Settlement of disputes.

The parties are of course bound from the moment the contract is made, and, as we have seen, the bargain is checked on the following day. Any disagreement would then be discovered, and would, if necessary, have to be referred to arbitration; if arbitrators cannot be found, or are unable to agree, the matter would then be finally referred to the Committee for their decision. The Committee do not entertain any application which has for its object to annul any bargain in the Stock Exchange, unless upon a specific allegation of fraud or wilful misrepresentation. There are also certain dealings which they refuse to recognize, such as dealings in letters of allotment, either of loans or shares in new companies; or dealings which have been effected for a period more than a month in advance. This rule would apply, in ordinary securities, to all bargains made for a period beyond the ensuing two accounts; and, in English and India stocks, to all dealings for a future account effected more than eight days previously to the account then pending. It must not be assumed, however, that a member, relying upon this fact, can repudiate any such bargain with impunity, for it is within the discretion

Dealings for future account.

of the Committee to take into consideration any dishonourable conduct on the part of members.

Dealings in prospective dividends.

Dealings in prospective dividends on shares or stock of railway or other companies are prohibited by the rules, and are, à fortiori, not recognized by the Committee; although, if contracts of this nature should be made, there is nothing in the Gaming Act before alluded to, or in the principles of common law, to render them voidable.[1]

Remedies for delay.

All contracts on the Stock Exchange are made subject to an implied reservation of the right of rescission, if the contractee fails to complete; that is to say, the party who is ready and willing to complete may in such cases treat the original contract as rescinded, effect elsewhere a similar bargain at the market price, and claim against his original contractee for any loss incurred. This is in accordance with the ordinary rule of law, so far at least as it relates to the remedy of the buyer; but on the Stock Exchange there are certain regulations as to the period at which a member may be treated as having failed to complete his bargain, and as to the method of ascertaining and claiming the amount of loss incurred, which must be strictly followed where it is sought to enforce the remedy.

"Buying in" and "selling out."

If loss has been incurred, it will be in every case the difference between the contract price and the price at which the security is bought in or sold out, as the case may be, against the member who has failed to complete his contract.[2] The member wish-

[1] *Marten* v. *Gibbon*, 33 L. T., N. S. 561. Since this case was decided the wording of the Stock Exchange rule has been altered; in the report the old rule is set out.

[2] See *Pott* v. *Flather*, 16 L. J., Q. B. 366, where the amount recoverable at law was held to be the difference between the contract price and the market value of the security at the time the contract was broken.

ing to enforce completion of a contract notifies its non-completion to one or other of the official brokers authorized by the Committee, and gives him instructions to effect the buying in or selling out, as the case may be. This is carried out by auction publicly in the House. The duty of the buying-in broker is to follow as closely as possible the instructions of the member from whom he receives his order. In cases where he is not specifically instructed as to the extent to which to bid up beyond the market quotation he exercises his discretion. If he finds no seller, after bidding up to what he considers a reasonable limit, he sends a notification to that effect to the broker instructing him, and claims half the commission he would have charged, if he had been successful, from the original delinquent.

Auction.

Where instructions have been given to buy in, an hour's notice of the intended purchase must be posted in the Stock Exchange; but still it may sometimes happen, where the security is one which is not much dealt in, that no member is in a position to deliver on such short notice, and any attempt to buy in would then prove abortive. In these cases some delay necessarily takes place, but when the purchaser's broker makes every effort to buy in, the desired result is always attained, and the buyer is satisfied either by delivery of the security in question, or by its re-sale to the member unable to deliver.

Public notice of buying in.

While there is any sufficient reason to excuse non-delivery of securities, such as that they are known to be out of the control of the seller for the payment of calls, or the receipt of interest, dividends, or bonus, it is not allowed to buy them in, but the Committee, on being applied to, will fix a day on which they may be bought in.

When securities out of control of seller.

The buying-in broker, after having bought in,

Transaction to be traced

to responsible party.

renders a contract note for this purchase to the broker under whose instructions he has acted, together with the securities. This contract note names the price of the buying in, and the amount of the commission charged by the buying-in broker. The contract note is passed to the dealer against whom the buying in has taken place; and if he is only a middleman, it is passed on through all intermediaries till it reaches the member responsible for the delay. All members through whose hands it passes book it as a bargain, and settle the differences arising therefrom in the ordinary way. The original sale by the delinquent is thus cancelled, leaving merely a difference to pay on the transactions, and he will have, if really intending to deliver stock, to sell again when in a position to deliver. The result is, that the original contracting party who is not in default is placed in the same position as if the contract had been duly completed, inasmuch as the substituted contractee is bound to complete immediately; that is to say, in the case of a buying in, the new seller is bound to deliver before one o'clock on the following day,[1] otherwise the security may be repurchased without further notice, and the loss claimed from him; while, in the case of a selling out, payment must be made at once on receipt of the securities, or, if a ticket is to be passed, this must be done within half-an-hour, otherwise the transfer may be made into the buyer's own name, and the money claimed from him.

It remains to describe the periods at which, under different circumstances, these remedies may be enforced.

Selling out on non-

On ticket days, as we have seen,[2] it is the duty of

[1] On Saturdays at 12 o'clock.

[2] Ante, p. 21.

a buyer of registered securities, if he intends to take them up, to issue a ticket before twelve o'clock, and it is the duty of all the intermediate parties to pass the ticket without delay. If the deliverer of the securities does not receive a ticket by half-past two o'clock,[1] he is entitled to assume that somebody is in default, and he may sell out his securities up to three o'clock on that or any subsequent day. Then if it turns out that the ticket was not regularly issued before twelve o'clock, the issuer will be made responsible for any loss occasioned by the selling out. Should, however, the ticket have been regularly put into circulation, the holder of it at two o'clock would be the person responsible for any selling out on the ticket day; but it hardly ever happens that the selling out is enforced on the same day. If the selling out takes place on any subsequent day, the holder of the ticket at three o'clock[2] on the previous day is liable, unless he can prove undue delay on the part of his immediate buyer in passing the ticket.

Receipt of ticket.

To facilitate the tracing of the transaction to the responsible party, it is a rule of the Stock Exchange that any member who receives a ticket for registered securities from the issuer after twelve o'clock on ticket day, must note the time on the back of the ticket; and it is also required that the member who first receives any ticket after one o'clock must draw a line to note the fact. Similarly, at each half-hour up to three o'clock, and after that hour the exact time must be marked at which the ticket is received. Members omitting to note the times thus fixed, may become liable for losses occasioned by

Endorsement of time of passing ticket.

[1] In the case of English and India stocks, &c., this is half-past one on the day for delivery.

[2] On Saturdays, one o'clock.

Delivery of securities after time.

selling out in case undue delay is proved. And, again, a member who accepts delivery of securities to bearer after time, and passes them on without taking the numbers, thereby increasing the difficulty of tracing the transaction, may be required himself to trace out the member responsible for the loss. These arrangements, though still in force, are considerably modified in practice by the intervention of the Settlement Department.

Antedated tickets.

Since this liability depends to such a great extent upon the date of the tickets passed, of course no member can be obliged to accept an antedated ticket. If, however, a ticket is tendered to him as such, and he does not refuse it, he takes it with all its liabilities; but if it is passed as an ordinary ticket, the liabilities remain with the member who put the ticket again into circulation. If a ticket is undated, a member holding it is not liable for any loss arising from the security having been bought in, unless such ticket has been seven days in his possession. But if any member makes any alteration in a ticket, or detains it improperly, he is liable for any loss occasioned.

Undated tickets.

Right of seller to difference between ticket price and making-up price.

Should a seller not be satisfied with the name of the issuer of a ticket passed to him at a price below the price of his sale, he is entitled to protect himself by demanding immediate payment of the difference between the price marked on the ticket, and the making-up price of the day; but if the making-up price is above the price of sale, he is only entitled to claim the difference up to the price of sale. If, however, the price on the ticket is lower than any quotation in the official list during the account, the seller is entitled to refuse it altogether, unless the bargain represented by such ticket was made within the two preceding accounts.

Split tickets.

If a member splits a ticket, he must keep the original one, or he may be required himself to trace it in case of selling out. He must copy on the split tickets the name of the issuer of the original ticket and must also write on them his own name as being the person responsible for the splitting. The buyer will, in consequence of the splitting, be compelled to pay more than one registration fee, and if the amount of the security purchased is split into odd sums, he will also have to pay larger stamp duty; but it is a rule of the Stock Exchange that a seller cannot be called upon to prepare a transfer for an amount of shares or stock requiring a higher stamp than 50*l*. Any member therefore issuing a ticket for such an amount should specify on the ticket the amounts in which he desires to have the stock transferred, that is to say, the way in which he may wish to have it divided so as to involve the least possible cost of stamps, having regard to this rule. The expense of any further stamp duty required on the transfers in consequence of a splitting otherwise than as indicated on the ticket, may be claimed by the buyer from the member who split the ticket, as also the expense of registering any further transfers than are shown by the specification on the ticket. No particular time is fixed by the rules for sending in these small claims, but they are usually settled within a few weeks.

Buying in on default of delivery.

Then on the settling day, the buyer of securities to bearer is entitled to have them delivered to him by half-past two o'clock, and if this is not done he may buy in on the following[1] or any subsequent day

[1] If the securities have been bought for any day except the settling day, and not delivered by half-past two on that day (or half-past twelve on Saturdays), they may be bought in on the same day.

after one hour's notice posted in the foreign market announcing the intended purchase. Registered securities, as we have seen, are not required to be delivered until the expiration of ten days from the ticket day. On the expiration of that time the buyer becomes entitled to delivery, or otherwise he may buy in against the seller at or after twelve o'clock on the eleventh, or on any subsequent day.[1] Here also an hour's notice must be posted in the Stock Exchange, and the purchase must be made or attempted within half-an-hour after the expiration of the time fixed. The name into which the stock or shares are to be transferred must be stated in the order to buy in. The loss occasioned by such buying in must be borne by the ultimate seller, unless he can prove that there has been undue delay in the passing of the ticket on the part of any other member, who in that case becomes liable.

English and India stocks.

English and India stocks, &c., which have been bought for a specified day and not then delivered, may be bought in on the following day at eleven o'clock, and the member causing the default is liable for the loss incurred, and is also liable to a fine of $\frac{1}{8}$th per cent. for the non-delivery of the stock, independently of its being bought in. This rule is still in force, but the necessity for any buying in of these stocks is extremely rare, and the attendant fine is never imposed.

Delivery.

As to what constitutes a valid delivery,[2] it is a rule

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[1] Where the ticket has been issued and passed on the making-up day, the time only begins to run from the ticket day.

[2] No member can be required to accept the delivery of a certificate of American shares of a larger amount than 10 shares of $100 each nominal capital, or 20 shares of $50 each, nor an American bond of a larger amount than $1,000, except upon special contract.

that every bond or scrip share is considered perfect, unless it be much torn or damaged, or a material part of the wording be obliterated. The Committee will not take cognizance of any complaint in respect of bonds or shares alleged to have been delivered in a damaged condition, or deficient in or with irregular coupons, should they be detained by the buyer more than eight days after the delivery, unless it can be proved that the member passing them was aware of their being imperfect.

Torn or damaged bonds.

Irregular coupons.

And all bargains must be settled in securities which have not been drawn for redemption. In case of the erroneous delivery of any drawn securities, the buyer (on receipt of undrawn securities, and on allowance being made for any drawing or dividend of which he may have lost the benefit) must deliver such securities back to the person who held them at the time of the drawing, or must pay to him any proceeds received from such drawing, provided the securities or the proceeds thereof be traced to, and remain in the possession, and under the control, of such buyer, all intermediate members being released from liability.

Drawn bonds.

No claim in respect of the erroneous delivery of drawn securities will be entertained by the Committee unless made within nine calendar months.

The securities delivered must also bear the proper ad valorem stamp,[1] which is imposed by the Act on

Stamps on securities to bearer.

[1] The amount is as follows:—On any security for the payment of money not exceeding £25 .. .. .. £ 0 s. 0 d. 8
Exceeding £25 and not exceeding 50 .. .. .. 0 1 3
,, 50 ,, ,, 100 .. .. .. 0 2 6
,, 100 ,, ,, 150 .. .. .. 0 3 9
,, 150 ,, ,, 200 .. .. .. 0 5 0
,, 200 ,, ,, 250 .. .. .. 0 6 3
,, 250 ,, ,, 300 .. .. .. 0 7 6
,, 300, for every £100, and also for any fractional part of £100, of such amount 0 2 6

all mortgages, bonds, and debentures, and on all foreign securities issued subsequently to the 3rd June, 1862, except those on which the dividends are payable abroad. Any person transferring such a foreign security not duly stamped is liable to a penalty of 20*l.*[1] The same penalty is imposed on the issuing or delivering of any letter of allotment, or scrip certificate which does not bear a penny stamp.[2] Share warrants to bearer, issued under the Companies Act of 1867, must bear three times the amount of ad valorem stamp duty which would be chargeable on a deed transferring the shares specified in the warrant, if the consideration for the transfer were the nominal value of the shares;[3] and in default, a penalty of 50*l.* is imposed on the principal officer of the company issuing the warrant. Stock certificates issued under the National Debt Act of 1870 are exempt from stamp duty.

Coupons or certificates with transfer deed.

Again, the buyer of registered securities may refuse to pay for a transfer deed unaccompanied by coupons or certificates,[4] unless it be officially certified thereon that the coupons or certificates are at the office of the company. But if the transfer deed be perfect in all other respects, the shares or stock must not be bought in until reasonable time has been allowed to the seller to obtain the verification required. In the case of railway stocks, if the seller have a larger coupon than the amount of stock conveyed, or only one coupon representing stock conveyed by two or more transfer deeds, the coupon may be deposited with the secretary of the Share and Loan Department of the Stock Exchange, who will forward it to the office of

Division of coupons.

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[1] 33 & 34 Vict. c. 97, s. 114.
[2] Ib. s. 101.
[3] The amount of this duty is given on page 112.
[4] See *Hunt* v. *Gunn*, 13 C. B., N. S. 226.

the company, and certify to that effect on the transfer deeds, which then become a valid delivery.

New securities in right of old.

If new securities have been issued in right of those in which the dealing has taken place, the buyer is entitled to the new ones, provided that he specially claims them in writing from the seller within a reasonable time.[1] In the case of registered securities, claims are required to be settled by letters of renunciation,[2] when practicable; but if not practicable, and there be sufficient time for registration, the seller may, after due notice, require the buyer to complete the bargain in old shares or stock. The seller of securities to bearer may also after due notice require the buyer to complete the bargain in old securities. These claims should be entered as bargains, and as such be checked in the usual manner.

Letters of renunciation.

Claims.

Fixing prices for new shares.

If the new shares or stock cannot be obtained by letters of renunciation, or by the transfer of the old, the Committee will fix a price at which the same must be temporarily settled, and this amount may be deducted by the buyer from the purchase-money of the old securities, until the special settlement.

The Committee will not entertain any dispute relating to unchecked claims of this nature unless brought before them within ten days after the special settling day.

Right of buyer to dividends.

Bargains in securities to bearer must be settled with the current coupon attached. If a coupon is due on the settling day the bonds must be delivered ex coupon. If a coupon becomes due after the settling day for which the securities have been sold, but prior to their delivery, the buyer has the right to claim the full market value of the coupon should it

[1] See *Stewart* v. *Lupton*, 22 W. R. 855.

[2] These must bear a penny stamp like letters of allotment

have been detached before delivery. This value, in case of dispute, is fixed by the secretary to the Share and Loan Department, who also fixes a sterling price for all coupons which are payable only abroad, at which price they must be accounted for. Similarly the seller of registered securities is responsible for any dividends which he may receive pending registration of transfers,[1] which must be accounted for at the nett amount receivable after deduction of income tax. It may, however, always be agreed at the time of sale whether the price paid is to include an approaching dividend, but, if nothing is said, the question is decided by the date of the quotation "ex dividend" in the official list.

Quotations ex dividend or ex interest.

In the official list the practice is to begin to quote bargains in securities to bearer "ex dividend" on the day on which the dividend is payable, and to quote bargains in transferable shares or stock "ex interest" from the beginning of the account in which the interest may become payable, and "ex dividend" from the beginning of the account following that in which the dividend may have been declared, provided the dividend be made payable to the holders then registered; but in case of a subsequent closing of a company's books for payment of the dividend, then, from the beginning of the account following that in which such closing of the books occurs. Shares in foreign railways are quoted, when practicable, "ex dividend" or "ex interest" at a period in accordance with the practice of foreign bourses.

Railway debentures.

Debentures, and bonds of railways in Great Britain, Ireland, and the East Indies, are dealt in at prices exclusive of accrued interest, and the accrued interest up to the day for which the bargain was done is

[1] See *Black* v. *Homersham*, 4 Ex. D. 24.

paid by the buyer in addition to the price of the bargain; but bargains in bonds and debentures of colonial and foreign railways include the accrued interest in the price.

When buyer entitled to drawing.

In the case of an approaching drawing, although the price paid by the buyer may be intended to include the drawing, yet he has no claim against the seller if it should happen to take place before the day for which the securities were bought; that is to say, he would not be entitled to claim delivery before that day. If, however, the bargain has been specially made "cum drawing," and, owing to any undue delay in delivery of the securities, or for any other reason, the drawing takes place before their numbers can be made known to the buyer, so that the benefit of the drawing is lost to him, he would fairly be entitled to the calculated value of the drawing as compensation.

By whom payment to be made.

The selling broker then completes the bargain by delivery of the securities to the jobber to whom he sold them, unless he has received from the jobber, or through the Settlement Department, a ticket such as we have seen may be issued by the ultimate buyer. In that case he delivers straight to the ultimate buyer, but he has a right to elect whether he will demand payment from his immediate buyer or from the original issuer of the ticket. If he applies to the latter and fails to obtain payment, or if he receives a cheque which is dishonoured, the former may be called upon for immediate payment. If he prefers to settle in the first instance with his immediate buyer any bargain in securities to bearer, it is open to him to do so, but he must in that case deliver the securities before half-past twelve instead of half-past one o'clock. A buying broker who is desirous of taking delivery of such securities from his immediate seller would usually issue no ticket; but if, in order to obtain

To whom payment to be made.

earlier delivery, he do issue a ticket, he must give notice before twelve o'clock on ticket day to his immediate seller of his intention to settle with him, and cannot then be called upon to pay after two o'clock on settling day. Should he neglect to give such notice, he may be called upon to pay up to half-past two.

Selling out on default of payment.

The purchase-money is received by the seller, on delivery of the securities, from the member to whom they are delivered; that is to say, either the ultimate buyer or the immediate buyer, according to whether a ticket has or has not been passed. This may take place on the settling day, or any subsequent day, but immediate payment can be demanded only if the securities are delivered before half-past two;[1] and on settling days securities to bearer for which a ticket has been passed must be delivered one hour earlier in order to entitle the deliverer to demand payment; but registered securities must always be paid for till half-past two.[1] If the buyer is not prepared to pay at the hour thus fixed, supposing him not to be the immediate buyer, the seller can at once call upon his immediate buyer to pay; should this immediate buyer be in a similar position, the seller may at once sell out, but this is rarely done until the following day.

Payment for portions.

If the ticket has been split, the security will be delivered in portions, and the buyer must pay for each portion of registered shares or stock presented, provided the number be not less than ten shares, or the value less than 200*l*. Tickets for securities to bearer cannot be split; but the security may be delivered in portions, the ticket being presented to the issuer for alteration, so that it may show the amount

[1] On Saturdays, one o'clock.

still remaining to be delivered, and any such portions must be paid for on delivery, if required.

Stamps and fees.

The amount of purchase-money will include the ad valorem stamp duty,[1] and registration fee, which are payable by the buyer. This fee is ordinarily paid to the company by the buying broker when he sends in the deeds for registration, but some companies have the custom of making out their own transfer deeds and of receiving the fee with the instructions to prepare transfers sent in by the selling broker; in the latter case the selling broker claims the fee of the buying broker when he delivers. In cases of loans, the borrower pays the nominal consideration stamp of ten shillings, the registration fee, and the mortgage stamp, when required.

Payment of calls not yet due.

If a call has been made upon the shares sold, the deliverer will remain legally liable to the company until the transfer is registered; he is, however, by the rules of the Stock Exchange, entitled to protect himself by paying the amount, although not yet due, and claiming it, together with the purchase-money, from the issuer of the ticket, on delivery of the security.

Brokers treated as principals.

With regard to the personal liability of the broker for payment of the purchase-money, it seems to have been formerly a mere understanding between members of the Stock Exchange that they did not recognize in their dealings any other parties than their own members, so that in considering the question whether credit was given by the jobber in any individual case to the broker or to his principal, a jury would have been allowed to hear evidence to rebut the presumption that the broker was primarily liable;[2]

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[1] The amount of stamps required will be found on p. 112.

[2] *Mortimer* v. *M'Callan*, 6 M. & W. 58.

but now, independently of the fact that the Committee would hardly allow a jobber to bring such a question before a jury, there is a distinct rule that brokers are to be treated on the Stock Exchange as principals, and that no member can be obliged to take a reference for payment to a non-member, or to pay a non-member for securities bought in the Stock Exchange.

Cheque. The ultimate payment of the purchase-money is accordingly by the cheque of the buying broker, which must be passed through the clearing-house, unless he consents to its being otherwise presented.

Bank notes. If a member require bank notes in payment for securities sold, he must either stipulate to that effect at the time of making the bargain, or else he must give notice before half-past eleven on the day of delivery, and he is then entitled to cash upon delivery of the securities or the bank receipt.[1]

Genuineness of securities. The deliverer of securities to bearer is responsible for their genuineness, and, in case of his death, failure, or retirement from the Stock Exchange, this responsibility attaches to each member in succession through whose hands the ticket for the securities may have passed.[2] And the deliverer of registered securities is responsible for the genuineness and regularity of all documents delivered, and for such dividends as may be received until reasonable time has been allowed to the transferee to execute and duly lodge the documents for verification and registration. The general effect of the rules bearing on this point is in accordance with the rule of law treated of in subsequent chapters, that the buyer must be put into actual possession of the securities purchased,

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[1] See *Mocatta* v. *Bell*, 27 L. J., Ch. 237.

[2] See *Royal Exchange Assurance Co.* v. *Moore*, 2 New R., Q. B. 63.

with all the advantages accruing to a holder from the date of the purchase.

When an official certificate of registration of the shares or stock bought has been issued, the Committee will not, unless bad faith is alleged against the seller, take cognizance of any dispute as to title, until the legal issue has been decided, for this issue may involve intricate questions as to the liability of other parties. As between members of the Stock Exchange, there is a rule that all reasonable expenses of the legal proceedings have to be borne by the selling member.

Waiver of right to buy in or sell out.

The right to buy in or sell out securities will be considered to be waived so far as intermediates are concerned if not exercised within a certain time. Thus the buyer of securities to bearer who allows two clear days to elapse without availing himself of his right to buy in, or without attempting to buy in, is taken to release his seller from any loss in consequence of the public declaration of any member as a defaulter, unless he has waived his right at the request or by the consent of his seller.

Again, the issuer of a ticket for registered securities who allows thirteen clear days to elapse without enforcing this right is also taken to release his seller from all liability in respect of the non-delivery of the securities unless the waiver has been at his request or with his consent. In this case the holder of the ticket alone remains responsible to the issuer for the delivery of the securities, all intermediate parties being released.

So if the deliverer of registered securities allows two clear days to elapse without availing himself of his right to sell out after default has been made in passing a ticket, his buyer is released from all loss, except in cases where the ticket has not been passed

in consequence of the public declaration of any member as a defaulter. If a seller of such securities does not deliver within thirteen clear days, the intermediate buyer from whom he received the ticket is released, and the issuer of the ticket alone remains responsible for the payment of the purchase-money.

CHAPTER IV.

PRINCIPAL AND JOBBER.

Intervention of Committee.

It is now proposed to inquire into the relationship created between the principal and the jobber with whom the broker has dealt. Here again, as in the case considered in the preceding chapter, the rules of the Stock Exchange forbid the jobber to enforce any claim by law against the principal unless with the consent of the Committee, or, as the rule seems to imply, unless with the consent of the intermediate broker.[1] This question would not arise except in the event of the default of the broker, a subject to be dealt with in the next chapter, but we may say here that upon the accepted theory that all members deal with one another as principals, the Committee would never permit a jobber to bring an action of the kind for his own sole benefit. Any action permitted would have to be for the benefit of the estate. Of course such prohibition by the Committee would not constitute any legal bar, but disobedience might be

[1] The rule is as follows:—"No member shall attempt to enforce by law a claim arising out of Stock Exchange transactions against a member or defaulter, or against the principal of a member or defaulter, without the consent of such member, of the creditors of the defaulter, or of the Committee.

"The Committee have power to intervene in cases where the principal of a member shall attempt to enforce by law a claim which is not in accordance with the rules, regulations, and usages of the Stock Exchange, and will deal with such cases as the circumstances may require."

followed by expulsion from the House. The rule referred to goes on to add that the Committee have power to intervene in certain cases when an action is brought against a member by a non-member.

This rule is a very good instance of the growth of the Stock Exchange rules, and in its original form dates from a time when there was no certainty as to the binding nature at law of Stock Exchange transactions. The Committee have from the first strenuously insisted upon the carrying out of all bargains irrespective of the view the law might take, and their power of action under this rule used therefore to be of great importance. Though it remains in the book of rules it is now seldom acted upon. It would seem to give the Committee power to assist in the defence of any action attacking any of the rules or usages, and an instance of its being acted upon was the case of Tomkins *v.* Saffery,[1] where, in consequence of certain remarks made in court by James, L. J., and which were considered to contain an aspersion upon the whole body and its customs, the Committee carried the case to the House of Lords, not for the sake of gaining the case, which was hopeless, but for the purpose of correcting some grave misapprehensions which arose from the terms in which judgment was pronounced in the Court of Appeal, and in the House of Lords the reasonable, fair, and business-like character of the rules referred to in the case was fully recognized.

The Committee also have it in their power to modify, so far as members are concerned, the results of legal action in cases where the members have acted strictly in accordance with the rules and usages of the Stock Exchange. They may, for instance,

[1] 3 App. Cas. 213.

consider it part of their duty to compel a broker to reimburse the jobber with whom he had dealt any damages which the law might, according to their opinion, have unfairly awarded to his principal. It has happened in a case where a principal had failed to recover in an action against a jobber certain moneys paid by his broker according to the rules of the House but contrary to the directions of the principal, and where therefore the jobber had in the usual course of law been reimbursed by the unsuccessful plaintiff his costs, but as between party and party only, that the Committee ordered the broker to pay to the jobber certain extra costs incurred as between attorney and client, which had not been allowed on taxation of the costs in the action.

Legal rights of principal not affected.

Still, whatever be the powers which the Committee may have in this respect, there is no doubt that the rules of the Stock Exchange cannot protect its members from having actions brought against them.[1]

Accordingly, on the completion of the bargain between broker and jobber in the manner supposed in the preceding chapters, there is a good and valid contract between the principal and the jobber which can be enforced at law, but which will be of course interpreted with reference to the customs of the Stock Exchange. Or, if the principal is the party aggrieved, he has the option of referring his complaint to the Committee as provided by the rules.

Effect of sale to jobber.

Considering then, first, the case of registered securities, let us suppose a sale has been effected by the broker, on behalf of his principal, to a jobber in the manner described in the previous chapters. It seems to have been a matter of doubt whether, in cases outside the Stock Exchange, the vendor of

[1] *Ex parte Saffery*, 4 Ch. D. 561; 3 App. Cas. 213.

shares can require the purchaser to accept and register a transfer in his own name,[1] or whether the purchaser would have a right to call upon the vendor to execute a transfer to a nominee of the purchaser on the analogy of a sale of real estate,—where the vendor could not object to execute a conveyance on the ground that it was not a conveyance direct to the person with whom he had made the contract; or of a sale of goods,—where the vendor could not refuse to deliver them to the order of the purchaser, and insist on delivering them to the purchaser himself. The latter view was that taken by Lord Blackburn in Maxted *v.* Paine,[2] where he said that the right of the seller is to require his contractee to procure the transfer to be executed by his nominee, and to be registered after execution so as to relieve him from all future liability, and that he has a right to hold his contractee personally liable if this is not done, but not to dictate to him whether he shall do this by taking the shares in the nominee's name or his own. This view is supported by the current of authority, and is certainly the only one applicable to dealings on the Stock Exchange, where the intervention of a jobber is, in the large majority of cases, a necessity. Upon conclusion of the bargain, the securities sold become at once in equity the property of the jobber, and they are taken to be held by the principal as trustee for him. There is, then, nothing to prevent his selling that which is so held in trust for him, just as if it had been vested in him by a legal transfer, provided the rights of the original seller are not interfered with. This resale is naturally the object the jobber has in view, and is presumed to be contem-

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[1] Per Lord Cairns, C. in *Coles* v. *Bristowe*, L. R., 4 Ch. 10.

[2] L. R., 6 Ex. 151.

plated by the selling principal, being in accordance with the custom of the Exchange. Accordingly, the contract, which the purchasing jobber will be considered to have made with the selling principal, is equivalent to an undertaking that he will, at the time fixed, either himself take and pay for the securities, or else that he will furnish the seller with the name of another person who will agree to accept a transfer of and pay for them;[1] and, in the meantime, that he will indemnify the seller against all the consequences of his remaining on the register as legal owner of them.

Implied contract by jobber.

If, then, the jobber takes the securities, he will be himself the ultimate transferee, whose position is discussed in the following chapter. If he do not himself take them, he can only fulfil this contract by furnishing the name of a person who is competent and willing to accept the transfer, that is to say, the contract is not fulfilled if the name be that of a non-existent person, a lunatic, an infant, or a person who has not given authority for the use of his name.[2] The whole object of the seller being to obtain a real purchaser of the shares, it would be in the highest degree irrational to suppose that this contract could be fulfilled except either by accepting and paying for the shares, or by providing some one who could validly contract to do so.

Passing improper name.

Where, therefore, the name of an incompetent person has been passed, and the contract of the jobber remains consequently unfulfilled, the seller

[1] *Nickalls* v. *Merry*, L. R., 7 H. L. 530. The same contract is implied where the jobber is merely taking in the securities for the real buyer; *Allen* v. *Graves*, L. R., 5 Q. B. 478.

[2] *Maxted* v. *Paine* (1), L. R., 4 Ex. 81; *Maxted* v. *Morris*, 21 L. T., N. S. 535; and see *Nickalls* v. *Eaton*, 23 L. T., N. S. 689, and *Dent* v. *Nickalls*, 29 L. T., N. S. 536.

will at any time be entitled to a legal remedy, and it seems also that the Committee of the Stock Exchange will give relief to the selling broker under such circumstances, even though years may have elapsed before the matter is discovered and laid before them.[1] The buying jobber in such cases would, of course, have his remedy over, so that ultimately the loss would be made good by the buying broker, or whoever else is responsible for the issuing of the name.[2]

Extent of implied promise by jobber.

But there is no implied promise on the part of the jobber that the buyer, though competent to contract, is also a responsible person,[3] which may be a matter of the greatest importance to the seller if there is any prospect of future liability to calls on the shares.

Objection to name of transferee.

We have seen,[4] that until the expiration of ten days after the account day, the purchaser is not entitled, in case of non-delivery, to buy in securities of this nature against the seller, the seller not being bound until that time to deliver a transfer. During this time, therefore, the seller has an opportunity to inquire into the responsibility of the buyer. If he has any objection on this score to the person named as buyer, the objection is passed back till it arrives at the hand of the person who originally issued the ticket, and if any dispute arises, the Committee decide as to the validity of the objection, and may require another name to be given in case they think it right to do so.

Where transferee a foreigner.

An objection may, for instance, be raised to the name of a foreigner resident abroad and having no property in this country; this has been considered

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[1] *Capper's case*, cited in *Nickalls* v. *Merry*, L. R., 7 H. L. 545.

[2] *Peppercorne* v. *Clench*, 26 L. T., N. S. 656.

[3] *Maxted* v. *Paine* (2), L. R., 6 Ex. 132.

[4] Ante, p. 80.

both by the courts of law,[1] and by the Committee of the Stock Exchange,[2] to be a reasonable ground for refusing to execute a transfer.

Novation.

The selling broker may elect[3] whether he will demand payment from his immediate buyer, or, as is the usual course where a ticket has been passed, from the broker of the ultimate transferee who is named on it as the member to be looked to for payment. In the latter case, as soon as the transfer deed is accepted, and the price paid, or settled in account, there is a novation which discharges the intermediate members from all further liability.[4] But if the price is not paid, or if the seller receive a cheque which is dishonoured, the member from whom he received the ticket may be compelled to make immediate payment; the acceptance and execution of the transfer by the ultimate transferee being not by itself such a novation as to preclude the seller from looking to his immediate buyer for the completion of the contract.

Discharge of jobber.

And if the inquiry into the responsibility of the transferee is waived, or an indemnity taken, as is sometimes the case, or if the time for objecting is allowed to elapse, then, on the expiration of thirteen clear days from the name day, the jobber who has passed the name of a competent person as the buyer, is, by the custom of the Stock Exchange, completely discharged from all further liability. In Maxted *v.* Paine,[5] this rule was held to apply even where the name passed was that of a man of straw and not the real purchaser, provided the jobber himself be exempt from fraud. But in that case two of the

[1] *Allen* v. *Graves*, L. R., 5 Q. B. 478.
[2] *Goldschmidt* v. *Jones*, 22 L. T., N. S. 220.
[3] Ante, p. 85.
[4] *Maxted* v. *Paine* (2), L. R., 6 Ex. 169.
[5] Second action, L. R., 4 Ex. 203; Ib. 6 Ex. 132.

judges[1] differing from the rest, were of opinion that the jobber ought to have been made liable for the consequences of passing the name of a person who was not bonâ fide the ultimate purchaser.

Guarantee of registration.

Apart from this custom, the legal liability of the jobber who has purchased the shares would extend further to the procuring of the registration in the name of the transferee; or he would be liable to indemnify the vendor against the consequences of non-registration; or perhaps be liable to a decree for specific performance of the contract, and be compelled to get the shares registered in his own name.[2] In the absence of such custom it could certainly be said that the very essence of a contract for the sale and purchase of shares is that the seller shall divest himself of and be relieved from, and that the purchaser shall assume, all future benefits and liabilities in respect of them, and that this could only be effected, at law, by means of a transfer properly executed by both parties and registered. On this principle it was held in the two celebrated cases of Grissell *v.* Bristowe,[3] and Coles *v.* Bristowe,[4] that, even in the case of contracts made in the Stock Exchange, evidence could not be admitted of a custom to discharge the purchasing jobber from the obligation to procure registration, for such evidence would be entirely to defeat the contract and the intention of the parties.

These decisions were however reversed on appeal,[5] and although the above principle was recognized as applicable to ordinary cases occurring outside the Stock Exchange, yet it was held that contracts made

[1] Cleasby, B., and Lush, J.
[2] *Paine* v. *Hutchinson*, L. R., 3 Ch. 388.
[3] L. R., 3 C. P. 112.
[4] L. R., 6 Eq. 149.
[5] *Grissell* v. *Bristowe*, L. R., 4 C. P. 36; *Coles* v. *Bristowe*, L. R., 4 Ch. 3.

in the House are so far governed by the customs of the House as that the jobber is discharged who has duly furnished a name of a person able and willing to contract to take the shares and pay for them, without being required also to guarantee the registration.

The intervention of jobbers in these transactions was stated to be obviously for the advantage of both sellers and buyers, who are thus brought readily into contact. And there is no hardship on the seller in the substitution of another buyer in the place of the jobber. All that the seller desires is, to find a customer who will pay the price, accept the shares, and relieve him from all further liability in respect of them. If a buyer is found as to whose responsibility the seller is satisfied, he has all that he has sought for. In practice, no seller employing a broker to sell securities for him ever thinks of stipulating that the immediate buyer shall register in his own name. He is satisfied with the buyer whom the broker finds for him, and for the obvious reason that he has it in his own power, by reasonable diligence on the part of himself or his broker,[1] to protect himself against loss. On the other hand, it would certainly be a considerable hardship on the jobber, if, for the small profit realized on the resale of securities, he were to be held responsible for the non-fulfilment of any part of the contract when the matter had passed out of his hands by the seller assenting to complete the transaction with the substituted buyer.

Of course a special bargain may be made, at a sacrifice of price by the seller, so as to extend the

[1] This is no part of the ordinary duty of a broker. See ante, p. 66.

liability of the jobber to a guarantee of registration; and in such a case the jobber would render himself liable to indemnify the seller against all future liability consequent on non-registration.[1]

Effect of purchase from jobber.

In the converse case, where the principal is the buyer of shares, the contract which the selling jobber will be considered to have made with him, is, that he will, on or before the day fixed, find some one who will agree to make a valid delivery of them according to the requirements of the Stock Exchange. In this case, if the jobber is not himself the owner and transferor of the shares, he cannot be treated as a trustee for the purchaser; but the rights of the parties are practically the same, inasmuch as, if a dividend be declared before delivery of the shares, the purchaser is entitled to it, or if a call be made subsequently to the contract, he is liable to pay the amount and indemnify the jobber. The liability against which the selling jobber is thus indemnified will be that incurred by him in respect of the call towards his seller, if he has already found one; otherwise it will be the liability to pay a purchase price enhanced by the value of the call. And when a real seller has been found, and a transfer executed, the buying principal remains liable to indemnify the selling jobber against the consequences of non-registration, or to have a decree for specific performance made against him to compel him to register.[2]

Discharge of jobber.

But here, again, we find that the custom of the Stock Exchange operates to discharge the seller, whether jobber or principal, who has caused transfers and share certificates to be handed to the purchaser

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[1] *Cruse* v. *Paine*, L. R., 4 Ch. 441.

[2] Post, p. 121; *Paine* v. *Hutchinson*, L. R., 3 Ch. 388; *Shephard* v. *Murphy*, 16 W. R 948.

or his broker, and that the seller is not under any further liability to procure the consent of the directors of the company to the transfer, or to guarantee that the ultimate vendor will do so.[1]

Apart from this custom, it has been held that the legal liability of a person who has sold shares in a company would extend to procuring the assent of the directors, if required, and to doing all that was necessary to invest the purchaser with the property in the shares, otherwise the consideration would fail,[2] and the buyer would be entitled to demand the return of his purchase-money. But this question does not seem to have presented itself recently for discussion, and it may be doubted whether the authority of the cases cited in the note would now be followed.

Securities involving no further liability.

The question of the jobber's discharge, where the dealing has been in securities which are fully paid up, and carry no further liability, will hardly now require any special notice. In such cases the only object of the principal is to receive the purchase-money or the security, as the case may be; and unless this is accomplished he retains his rights under the contract made for him with the jobber, and may enforce them either at law or through the agency of his broker in the manner described in the preceding chapter; but, as we have there seen, the broker must enforce them without delay, otherwise he will be taken to have waived them, and the intermediate parties will be discharged. The delay which will be considered to amount to a waiver, is fixed by the rules as either two days or thirteen days, according to circum-

[1] See *Remfry* v. *Butler*, E. B. & E. 887; *Stray* v. *Russell*, 1 E. & E. 888; post, p. 104.

[2] *Wilkinson* v. *Lloyd*, 7 Q. B. 27; *Lloyd* v. *Crispe*, 5 Taunt. 249; *Bermingham* v. *Sheridan*, 33 Beav. 660.

stances;[1] and if this time be allowed by the broker to elapse without enforcing his rights against the jobber, the principal will then be only able to claim against his broker for any loss incurred through his negligence.

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[1] See ante, p. 89.

CHAPTER V.

TRANSFEROR AND TRANSFEREE.

Contract between ultimate parties.

We have seen, then, that after acceptance of the name passed, execution of the transfer by the seller, and payment of the price, the jobber is discharged from all liability (assuming the name passed to be that of a person who is competent to contract); and upon this, all the intermediate steps which we have been discussing are overlooked, and the contract then remains to be completed between the ultimate buyer and the ultimate seller.

The contract which then arises between the ultimate parties is also to be interpreted according to the practice and usage of the Stock Exchange; and this introduces the distinction pointed out by Lord Romilly, M. R., in Hodgkinson *v.* Kelly,[1] that the contract is not, as has been supposed, the same as if the seller of shares had employed an agent to find out and enter into a contract with some particular buyer, and the buyer had done the same as to the seller, and that then only did a contract arise between buyer and seller; but, since both ultimate parties are bound by the usage, they are, from the beginning, bound to complete the contract, although ignorant of the person with whom they will complete until the day arrives when the name is passed. This contract amounts to an engagement by the ultimate transferor on one side and the ultimate transferee on the other, that, through the instrumentality of certain

[1] L. R., 6 Eq. 503.

other persons, whoever they may be, certain shares shall be sold and bought, and they undertake respectively to complete the contract with the person, whoever he may be, who buys on the one hand or sells on the other, although there is perhaps no identity between what the one sells and the other buys in respect of several such particulars as the date, the number of shares, the consideration, and even the time for completion.[1] In the cases cited it was strongly urged in argument that in the absence of such identity there could be no contract between the ultimate parties; but the objection was met by considering the usage of the Stock Exchange, under which the purchaser, upon receiving and retaining the transfer deeds and certificates, may be treated as having acquiesced in the transaction, and as having become, in fact, the purchaser of the security from the ultimate transferor.

Liabilities of transferor.

The transferor is accordingly bound from the beginning to deliver the securities on the day fixed, or within the time allowed by the rules; and he may be compelled to execute a proper transfer. He must also do whatever is necessary to entitle himself to deliver them; for example, he must pay all calls which have become due before the contract was made. It seems to have been formerly thought that the duty of the transferor would further extend to the procuring of the consent of the directors, if required, to the registration of the transfer, and that in fact the whole contract of sale was conditional on the ultimate introduction of the purchaser's name on the list of shareholders;[2] but this view is opposed to

[1] *Grissell* v. *Bristowe*, L. R., 3 C. P. 112; 4 C. P. 36; *Hawkins* v. *Maltby*, L. R., 3 Ch. 188; *Evans* v. *Wood*, L. R., 5 Eq. 9; *Shephard* v. *Murphy*, 16 W. R. 948.

[2] *Bermingham* v. *Sheridan*, 33 Beav. 660. This case has

the current of modern authority, and would not now be acted on in dealing with contracts on the Stock Exchange.[1] The principle upon which all questions as to the rights and liabilities of the parties may be decided is this, that from the moment when the contract is entered into, the transferor becomes a trustee of the security for the immediate buyer or his nominee, and is, therefore, until registration of the transfer, in the position of legal owner without any beneficial interest. From this it follows directly that he is liable to account for any dividends which he may receive, or for any bonus or new shares which may be issued to him while his name remains on the register, in right of the shares which he has contracted to sell.[2]

Liabilities of transferee.

And in the same way the transferee is bound from the beginning, that is to say, from the moment when the contract was entered into on his behalf, to pay for the securities when the time comes, and to take upon himself at once all the liabilities which attach to the ownership of the shares which he has contracted to buy, although he may perhaps have bought them from a dealer who is not the owner of them. At this stage the liability of the intending transferee is only towards his immediate seller; but it is, as we have seen in the last chapter, the same whether such seller is or is not the ultimate transferor. As soon, however, as the transferee, or his broker on his behalf, has accepted the name passed, a contract arises between the ultimate parties,

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subsequently been admitted by the judge who decided it to be no longer to be relied upon. See Lindley on Partnership, 714 (*u*); and L. R., 3 Ch. 393.

[1] *Stray* v. *Russell*, 1 E. & E. 888; *Evans* v. *Wood*, L. R., 5 Eq. 9; *Hodgkinson* v. *Kelly*, L. R., 6 Eq. 496; *Holmes* v. *Symons*, L. R., 13 Eq. 66.

[2] *Stewart* v. *Lupton*, 22 W. R. 855. See also ante, p. 83.

which binds him at least to accept the transfer, and pay for the shares. It is immaterial at this point whether there is any further contract implied in law, because if the company is solvent and he does not accept and pay for the transfer, the shares will be sold out against him; and if the company is insolvent, the damages recoverable against him for non-acceptance would be the same as if there was a complete contract of indemnity. But it is clear that when the transfer is accepted, and the price paid by the broker of the transferee, the contract is complete between the ultimate parties.[1]

Right of transferor to indemnity.

The transferor who has been hitherto in the position of a trustee for his immediate buyer, thereupon becomes a trustee for the transferee, or rather, for the equitable owner of the shares for the time being; the intermediate parties are, as we have seen, discharged from all further liability, and the transferor becomes entitled to indemnity from the equitable owner. Thus, for instance, if in consequence of his name remaining upon the register of shareholders he is compelled to pay any calls made subsequently to the sale, he may recover the amount,[2] although the transfer deeds may never have been executed by the transferee.[3] It is, in fact, the duty of the transferee to execute the deeds and cause them to be registered,[4] although by the Companies Act, 1867,[5] directors are authorized to transfer on the application of either transferor or transferee.

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[1] *Bowring* v. *Shepherd*, L. R., 6 Q. B. 209, per Brett, J. As to contracts and transfers after the commencement of the winding up of a company, see *Rudge* v. *Bowman*, L. R., 3 Q. B. 689.

[2] *Evans* v. *Wood*, L. R., 5 Eq. 9.

[3] *Hawkins* v. *Maltby*, L. R., 4 Ch. 200.

[4] *Morris* v. *Cannon*, 4 De G., F. & J. 581; *Cheale* v. *Kenward*, 3 De G. & J. 27; *Wynne* v. *Price*, 8 De G. & S. 310; *Shaw* v. *Fisher*, 5 De G., M. & G. 596.

[5] 30 & 31 Vict. c. 131, s. 26.

A mortgagee of shares, where the mortgage is in the common form of an absolute transfer, becomes himself the equitable owner; but when the mortgage debt is paid off, and the mortgagor has elected to take a re-transfer of the shares, the parties stand in the position of transferor and transferee, and the mortgagee is entitled to indemnity accordingly.[1]

Equitable owner liable to indemnify.

After completion of the purchase, the real equitable owner of the shares, who is liable to indemnify the transferor, is the person by whom they are purchased and paid for, quite independently of the name in which they are registered. Thus, in the case of Castellan *v.* Hobson,[2] where the real buyer had passed the name of one of his workmen as the transferee with a view to evade future liability, and where there was therefore no privity of contract between him and the seller, it was held that the workman, a man of straw, having no right to receive anything in respect of the shares and no power of disposition over them, could not be said to be the owner, and the real buyer was held liable to indemnify the seller against calls which had been made.[3] In this case the transfer had not been registered; but in the subsequent case of Brown *v.* Black,[4] where under similar circumstances the real buyer had desired that his own name should not be used, but had caused the shares to be registered in the name of an infant transferee, this was not considered to affect the question. The registration was void as between the company and their creditors, and on the winding-up of the company the liquidators restored the name of the seller as a contributory. He was held to be

[1] *Phené* v. *Gillan*, 5 Ha. 1.
[2] L. R., 10 Eq. 47.
[3] See also *Nickalls* v. *Furneaux*, L. R., Weekly Notes, 1869, 118.
[4] L. R., 15 Eq. 363; Ib. 8 Ch. 939.

a trustee of the shares for the person whose money really bought and paid for them, and from that person he was therefore held entitled to claim indemnity.

Not dependent on privity of the parties.

This doctrine of trusteeship was not formerly recognized by the Common Law Courts, and we accordingly find this question there treated quite differently. They were constrained to hold that the right to indemnity arose out of a contract between the parties, and they therefore concluded that after execution of the transfer deed it was not possible for the seller to claim indemnity against anyone other than the transferee therein named, because it would be impossible to fix anyone else with privity.[1] Now, however, the equitable principles above stated are equally applicable to cases in all the Courts, and it will no longer be material to establish privity in order to support a claim for indemnity.

An indemnity may, no doubt, in many cases be claimed from persons other than the equitable owner; for example, in the cases we have just dealt with, the seller would, no doubt, in theory have been entitled to his remedy against the transferee; or again, a person may so conduct himself as to be precluded from denying that he is the purchaser, and he may be bound to indemnify the seller notwithstanding that some other person is the real equitable owner.[2]

Not affected by the acts of the company.

It is to be observed that the question of the right to indemnity does not depend on the question whether the list of shareholders or contributories can be altered. The latter is a question purely between the shareholder and the company, that is to say, between

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[1] *Lord Torrington* v. *Lowe*, L. R., 4 C. P. 26; see also *Humble* v. *Langston*, 7 M. & W. 517; *Walker* v. *Bartlett*, 17 C. B. 446.

[2] *Shepherd* v. *Gillespie*, L. R., 5 Eq. 293; Ib. 3 Ch. 764.

him and all the other shareholders in the company, and has not the slightest effect upon the equities which may exist between the buyer and the seller of the shares; while the question whether the buyer shall indemnify the seller against the consequences of remaining a shareholder is one with which the rest of the shareholders have nothing to do;[1] and, therefore, a refusal by the liquidators of a company to register a transfer will not relieve the transferee from his liability to the transferor.

Continues after registration.

And this right to indemnity will, on the same principle, continue after registration of the transfer, for the transferor may still, in the event of a winding-up of the company within twelve months, become liable to calls as a contributory in class B., if the registered holder of the shares is unable to pay; and, further still, the right to indemnity will remain even after the transferee has again sold and transferred the shares to a third party.[2]

Death.

This claim for indemnity, as well as all other rights and remedies arising out of the contract between transferor and transferee, will pass to the personal representatives of the parties in the event of death; but whether the claim for indemnity would be provable in the bankruptcy of the transferee is a question which does not appear to have been yet decided. Before the passing of the Bankruptcy Act of 1869,[3] it was held to be not provable;[4] but the terms of the 31st section of that Act and of the 37th section of the present Act of 1883,[5] would

Bankruptcy.

[1] *Hodgkinson* v. *Kelly*, per Lord Romilly, M. R., L. R., 6 Eq. 500.

[2] *Kellock* v. *Enthoven*, L. R., 8 Q. B. 458, in Ex. Ch.; Ib. 9 Q. B. 241, affirming *Roberts* v. *Crowe*, Ib. 7 C. P. 629.

[3] 32 & 33 Vict. c. 71.

[4] *Holmes* v. *Symons*, L. R., 13 Eq. 266; *Kellock* v. *Enthoven*, supra.

[5] 46 & 47 Vict. c. 52.

Not dependent on privity of the parties.

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[illegible] case of [illegible]ens v. De Medina,[1] it was held [illegible] purchaser of registered shares, transferable [illegible] must tender a transfer deed to the [illegible] before he can enforce the con[illegible]. In the conveyance of real property [illegible] provision is made in the contract, the [illegible] conveyance falls on the purchaser [illegible] prepare and tender it. And the [illegible] same with regard to terms for years [illegible] of this case, the rule is [illegible] conveyances of property in shares,—the [illegible] the expense of stamps and [illegible] tender of the transfer to the vendor [illegible] case where a deed is necessary [illegible] not transfer[illegible].

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Methods of transfer.

The method of transferring shares, and the qualifications, if any, which may be imposed on the right of the holder to transfer them, will depend in each case upon the constitution of the company, and the form of the articles of association. The shares may be transferable by delivery, by indorsement, or by execution of a deed or other instrument in writing to be registered at the office of the company; and the registration may or may not require the assent of the directors.

Transfer deed.

The following form is that generally used for instruments of transfer. It is similar to that given in the Companies Clauses Act,[1] and in the Companies Acts of 1856[2] and 1862:[3]—

I, A. B., of ———, in consideration of the sum of £——— paid by C. D., of ———, hereinafter called the said transferee, do hereby bargain, sell, assign, and transfer to the said transferee, ——— shares, numbered ——— to ——— [*or*, £——— consolidated stock, *or as the case may be*], of and in the undertaking called the ——— company, to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same immediately before the execution hereof; and I, the said transferee, do hereby agree to accept and take the said shares [*or* stock], subject to the conditions aforesaid.

As witness our hands and seals, this ——— day of ———, in the year of our Lord one thousand, &c.

Signed, sealed, and delivered, &c.

Consideration money.

A note is generally appended to the transfer a note to the effect that the consideration money set forth may differ from that which the first seller will receive, owing to subsales by intermediate buyers, and that the Stamp Act requires in such case that the consideration money paid by the ultimate purchaser

[1] 8 Vict. c. 16.
[2] 19 & 20 Vict. c. 47.
[3] 25 & 26 Vict. c. 89, Table A.

shall be the one inserted in the instrument, as regulating the ad valorem duty. Cases have occurred where the transferor has refused to execute a deed containing an apparent acknowledgment by him of the receipt of a sum larger than that really paid to him;[1] and the Courts seem to have considered that in the absence of such an explanatory note on the face of the instrument, he would be justified in refusing to sign what is not in fact the truth.[2] The form is in any case unsatisfactory, since, by the addition of a very few words, the real nature of the transaction might be set out so as to be intelligible to persons who are ignorant of the practice of the Stock Exchange.

Stamps. The instrument of transfer must be duly stamped,[3]

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[1] *Mewburn* v. *Eaton*, 20 L. T., N. S. 449.
[2] *Case* v. *M'Clellan*, 20 W. R. 113.
[3] The stamps required are as follows:—

	£	s.	d.
On any transfer, whether on sale or otherwise,			
(1) of any Bank of England Stock	0	7	9
(2) of any stock of the East India Company ..	1	10	0
(3) of any debenture stock, or funded debt of any company or corporation, or of any Canadian Consolidated £5 per Cent. Stock inscribed in the United Kingdom (unless the stamp duty be compounded for by the government of Canada), for every £100, and also for any fractional part of £100 of the nominal amount transferred.....	0	2	6
On any transfer of any mortgage, bond, debenture or foreign security duly stamped (see p. 81), for every £100, and also for any fractional part of £100 of the amount transferred	0	0	6
On any transfer on sale of any other securities, where the amount of the consideration for the sale does not exceed £5	0	0	6
exceeds £5 and does not exceed £10	0	1	0
,, 10 ,, ,, 15	0	1	6
,, 15 ,, ,, 20	0	2	0
,, 20 ,, ,, 25	0	2	6
,, 25 ,, ,, 50	0	5	0
,, 50 ,, ,, 75	0	7	6
,, 75 ,, ,, 100	0	10	0

the amount of stamps required depending generally upon the amount of consideration money. Where the consideration itself consists of stock or marketable securities, the stamp must be regulated by their value.[1] Where any security has been bought for one consideration for the whole, but is transferred to the buyer in portions by different instruments, the parties are allowed to apportion the consideration as they like, provided that a distinct consideration for each portion is set forth in the transfer relating to it. Where any security has been bought for one consideration for the whole by several buyers, but is transferred to them respectively by separate transfers, each transfer must bear a distinct stamp. The stamp duty is payable on all transfers executed in this country, although the security may consist of shares in an undertaking situate abroad.[2]

Shares may be transferred by instruments in other forms,[3] but it is desirable for convenience of regis- Informal transfers.

	£	s.	d.
exceeds £100 and does not exceed £125	0	12	6
,, 125 ,, ,, 150	0	15	0
,, 150 ,, ,, 175	0	17	6
,, 175 ,, ,, 200	1	0	0
,, 200 ,, ,, 225	1	2	6
,, 225 ,, ,, 250	1	5	0
,, 250 ,, ,, 275	1	7	6
,, 275 ,, ,, 300	1	10	0
,, 300, for every £50 and also for any fractional part of £50 of such amount or value	0	5	0
On mortgage of any stock or marketable security, for every £5,000, and also for any fractional part of £5,000 of the amount secured	0	10	0
On any other kind of transfer	0	10	0

Transfers of shares in the government or parliamentary stocks or funds are exempt.

[1] 33 & 34 Vict. c. 97, s. 71. Other special cases will be found in the following sections.

[2] *Wright* v. *The Commissioners of Inland Revenue*, 25 L. J., Ex. 49.

[3] See *Copeland* v. *N. E. R. Co.*, 6 E. & B. 277.

tration to adopt the one given above. For example, if a deed of transfer includes a conveyance of other property, it might be extremely inconvenient to leave it at the office of the company, and indeed, if it were in complicated form, the secretary might be justified in refusing to register it.[1]

Where deed necessary.

Under the Companies Clauses Act, it was necessary that all transfers of shares should be by deed, but under the Companies Act of 1862,[2] shares are to be tranferable in the manner provided by the regulations of the company, which may or may not require the execution of a deed.[3] For example, under the provisions of Table A. of this Act, which constitute the regulations of every limited company formed under the Act, unless excluded or modified by the articles of association, it is only necessary that the "instrument" of transfer be executed by the transferor and transferee; there is, apparently, nothing to make the sealing or delivery of a deed compulsory.

Blank transfers, when void.

In the case, therefore, of a company subject to the Companies Clauses Act, or of a company whose regulations require a transfer to be by deed, a transfer in blank, that is to say, signed by the transferor, leaving a blank for the name of the transferee, or for the description of the shares, being wholly inoperative as a deed, is void at law;[4] neither will the Committee of the Stock Exchange interfere (except under special circumstances) in any question arising out of the delivery of securities by transfer in blank. A deed which is void in this way may be made good by filling up the blanks in the presence of the parties

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[1] *R.* v. *General Cemetery Co.*, 6 E. & B. 415.

[2] 25 & 26 Vict. c. 89, s. 22.

[3] See *Ex parte Sargent*, L. R., 17 Eq. 273, where the transfer was by deed.

[4] *Hibblethwaite* v. *M'Morine*, 6 M. & W. 200; *Swan* v. *North British Australasian Co.*, 7 H. & N. 603; 2 H. & C. 175.

who had executed it, the ratification by them being evidence of a re-delivery.

Effect upon the contract.

But, inasmuch as the contract for the sale of the shares is binding from the moment it was made, quite independently of any deed, or even of any writing, the mere execution of a void deed will of course not prevent the party from being held to his bargain, or from being liable in equity to execute a proper legal transfer;[1] this question will depend entirely upon the validity of the original contract.[2]

When valid.

Where the regulations of the company, as in the great majority of cases, do not require the instrument of transfer to be under seal, a blank transfer will be perfectly valid, although purporting to be executed as a deed, for the addition of a seal will not render the instrument less effectual than it would have been without a seal.[3]

Certificates.

It is usual for the directors of a company to require the production of the certificates before allowing a transfer to be registered, but this seems to be a matter entirely within their discretion. The fact of the name of the transferor being on the register is, so far as the company is concerned, conclusive as to his legal title, and the certificate is a solemn affirmation under the seal of the company that his name is on the register as the owner of the shares or stock.[4] It is given in order to enable him, upon a sale of his shares, to prove his title to them to the satisfaction

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[1] *Morris* v. *Cannan*, 4 De G., F. & J. 581. But as to scrip, see *Jackson* v. *Cocker*, 4 Beav. 59, and *Beckitt* v. *Bilbrough*, 8 Ha. 188.

[2] See *Tayler* v. *Great Indian Peninsular Railway Co.*, 4 De G. & J. 559.

[3] *Ortigosa* v. *Brown*, 38 L. T., N. S. 145; *Ex parte Sargent*, L. R., 17 Eq. 273.

[4] *Shropshire Union, &c. Co.* v. *R.*, L. R., 7 H. L. 496; *Re Bahia and San Francisco Railway*, L. R., 3 Q. B. 584; *Shaw* v. *Port Philip Gold Mining Co.*, 13 Q. B. D. 103.

Must accompany transfer deed.

of a purchaser; and, on the Stock Exchange, the transfer deed must be accompanied by this certificate, in order to constitute a valid delivery of the security; the practice, however, is not to require the actual delivery of the certificate to the purchaser, because, in many cases, the seller may not happen to have a certificate representing the exact amount sold, but, instead of this, the selling broker deposits the certificate with the company, or with the secretary of the Share and Loan Department of the Stock Exchange, and gets indorsed on the deed a memorandum that it has been so deposited. This memorandum or "certification," as it is called, is treated in the House as a sufficient acknowledgment, and is accepted in lieu of the certificates themselves.

If there has been any fraud in the registration, or in procuring the certificate from the company, if, for instance, it has been obtained by means of forged transfers, the register would no longer be conclusive as to the title of the transferor. In such a case it is held that inasmuch as the company issue these certificates for the purpose of being acted upon, so that the shares may be negotiated, any innocent transferee, who has acted on the faith of the certificate, would have an absolute right to indemnity from the company for any damage he may have sustained.[1] The same right to indemnity has been held to exist where forged certificates have been fraudulently issued by the secretary of a company in the course of his ordinary employment.[2] It is clearly of importance that a purchasing broker should secure this

[1] *Re Bahia and San Francisco Rail. Co.*, L. R., 3 Q. B. 584; *Simm* v. *Anglo-American Tel. Co.*, 5 Q. B. D. 188. See also *Hart* v. *Frontino, &c. Co.*, L. R., 5 Ex. 111, where, however, the form of the certificate was peculiar.

[2] *Shaw* v. *Port Philip Gold Mining Co.*, 13 Q. B. D. 103.

right to indemnity in every case, the safest plan being apparently to take a transfer certified by the company's secretary.

Effect of certificate without transfer deed.

If it is sought to create an equitable mortgage of the security by deposit of the certificates alone,[1] unaccompanied by transfer deed, it will be necessary for the mortgagee to inquire into the position of the intending mortgagor, for if the latter has only the legal title, and is in truth merely the trustee for another, the equitable mortgagee will be unable to enforce his claim in opposition to the original cestui que trust. To make himself perfectly safe, therefore, he should obtain an executed transfer, and procure registration also, for this is necessary to take the shares out of the order and disposition clause of the Bankruptcy Act.[2]

Effect of transfer in blank.

If the certificates so deposited are accompanied by transfers executed in blank, the very important question arises how far such blank transfers operate as an estoppel; that is to say, how far a person, who negligently executes a transfer in blank, would be bound by it in an action by an innocent person who has acted upon the faith of its being valid. The effect of a blank deed, where the articles of the company required the transfer to be under seal, was very much discussed in the well-known case of Swan *v.* N. British Australasian Company,[3] in which, after considerable difference of opinion, it was held by some of the judges that where a deed is void in that way there could be no estoppel. In that case the

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[1] See *Ex parte Union Bank of Manchester*, L. R., 12 Eq. 354.

[2] *Ex parte Stewart*, 11 L. T., N. S. 554; and *Colonial Bank* v. *Whinney*, per Bacon, V.-C. See *Times* of July 29th, 1884.

[3] 7 C. B., N. S. 400; 7 H. & N. 603; and in Ex. Ch., 2 H. & C. 175.

transfer deed had been executed altogether in blank; the person who executed it owned shares in two companies, and gave authority to his broker to fill them up with shares in one company, and the broker filled them up with shares in the other company, which were afterwards transferred to an innocent person. The Court held that the whole thing was a forgery, and that the proximate cause of the loss was not the negligent execution, but the forgery by the broker. The decision does not go the length of saying that if the broker had filled them up with the same shares which he was authorized to insert, the deed being, nevertheless, void in law, because executed in blank, the principal might not then have been estopped.[1]

A person who has signed a negotiable instrument in blank, is, if sued by a bonâ fide holder for value without notice, estopped from disputing any alteration made by filling up the blanks, unless it be clearly fraudulent on the face of it. But neither deeds, nor the usual instruments of transfer which purport to be deeds, are negotiable instruments. Nor is it possible to say that a person receiving a blank transfer is a holder without notice, because he necessarily has notice that the documents require to be other than they were when he received them, in order to pass any legal right or interest. Therefore, on each of these grounds, the general rule above stated is inapplicable to blank transfers. If the person taking such a transfer makes no inquiry, he acquires no more right or interest in the security than the person from whom he takes it, and would, even after registering the transfer in his own name, be in no better position than his immediate trans-

[1] See *Hunter* v. *Walters*, L. R., 7 Ch. 75.

feror if sued by the true owner of the security.[1] But if the person depositing the blank transfer is himself the registered true owner, his act would of necessity imply an authority to the depositee to fill in the blanks in whatever way is necessary to complete his security, and to insert his own, or possibly some other, name as transferee. Even if the depositee has power to delegate this authority to a third person, it would still remain subject to any limitation put upon it by the true owner, and could not affect the instrument of transfer with the character of negotiability. The practical effect of these considerations is, that a blank transfer is a good security only when deposited by the actual owner of the shares, or else when accompanied by an authority from him, enabling the holder to deal with it.

Prior equitable interests.

It may be said, therefore, speaking generally, that the transferee, as between himself and his transferor, takes the place of the latter, both as regards the past and the future;[2] but, with respect to the rights of third persons claiming a prior equitable interest, the rule is, that in the case of any negotiable securities transferable by delivery, such as ordinary securities to bearer,[3] the title of a bonâ fide purchaser for value, if acquired without notice of any such prior interest, cannot be impeached; and the same rule applies to registered securities where a valid

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[1] *France* v. *Clark*, 26 Ch. D. 257. The American decisions in *M'Niel* v. *The Tenth National Bank*, 46 New York Rep. 325, and *Moore* v. *Metropolitan National Bank*, 55 ib. 41, are in favour of the estoppel against the owner of non-negotiable securities who has conferred upon another the apparent power of disposition over them by endorsing an assignment on the certificates whether in blank or otherwise.

[2] *Mayhew's case*, 5 De G., M. & G. 837.

[3] *Gorgier* v. *Mieville*, 3 B. & C. 45.

transfer has been executed, and the legal right to be registered has been similarly acquired.[1]

Negotiability of securities.

Whether this rule is applicable to other securities will depend in each case upon whether such negotiability can be established by evidence of usage. Thus, in the case of Goodwin *v.* Robarts,[2] it was decided that the scrip of a foreign loan may be shown to be transferable to bearer by general usage where there is no enactment or agreement to the contrary; and such usage was shown to exist in all the stock markets of Europe with reference to the Russian and Hungarian Government loans which were in question in that case. It has recently been held that American Government bonds which have been "called in," cease to be negotiable instruments at the time fixed for repayment. This was decided by the Court of Claims, to whom the question had been referred by the Treasury Department of the United States, and the judgment of that Court was held by Stephen, J.,[3] to be binding here, in an action by a bonâ fide purchaser of such bonds for the return of the purchase-money, although the learned judge declined to express any opinion upon the merits of that decision. The bonds turned out to have been stolen in America, and were successfully claimed by the true owner; and it was held that the contract between the parties in England must be construed as if it had been made with reference to the American

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[1] *Dodds* v. *Hills*, 2 Hem. & M. 424; *Ward* v. *S. E. R. Co.*, 2 E. & E. 812; *Waterhouse* v. *Jamieson*, L. R., 2 Sc. App. 29; *Donaldson* v. *Gillot*, L. R., 3 Eq. 274; *Ex parte Sargent*, L. R., 17 Eq. 273.

[2] L. R., 10 Ex. 76, 337; 1 App. Cas. 476. The French government will, subject to notification in the *Bulletin Officiel*, restrain the negotiability of individual bonds for good cause shown.

[3] *Raphael* v. *Burt*. See *Times* of July 8th, 1884.

law as subsequently declared, and that the purchaser therefore acquired no better title than the vendor had to give. The plaintiff in this case also sought to recover on the ground of an alleged custom in London, that in such cases the vendor should return the purchase-money if the bonds were not paid on presentation, but he failed to establish such a custom. Judgment was, however, given for the plaintiff, on the ground of an implied warranty of title by the defendant under the circumstances of the case.

In another case the same rule was applied to establish the negotiability of scrip certificates of shares in a banking company before insertion of the name in which the shares are to be registered,[1] the evidence in this case being applicable to similar certificates in railway, mining, gas, water, and other companies. The shares and bonds of American railway companies, when endorsed to bearer, would probably also be treated as negotiable instruments.

Specific performance of a contract may be decreed in cases where the securities contracted to be sold are not currently dealt in or always to be obtained in the market; but in the case of current securities the buyer's remedy for breach of the contract will generally be confined to an action for damages. This was decided with reference to South Sea Stock in the leading case of Cuddee *v.* Rutter,[2] where it was considered that the plaintiff would not suffer at all by the non-performance of the agreement specifically if the defendant paid him the difference between the contract price and the market price at the time of action, and this principle has been frequently acted on in subsequent cases.[3] With this exception,

Specific performance.

[1] *Rumball* v. *The Metropolitan Bank*, 2 Q. B. D. 194.

[2] 5 Vin. Ab. 538, pl. 21.

[3] See notes to *Cuddee* v. *Rutter*, 1 L. C., Eq. 848.

an action will lie for the specific performance of the contract, if it is capable of being performed,[1] even although the directors of the company should refuse to allow the transfer.[2] It may often happen, especially in a winding-up, that power is given to the directors or liquidators to refuse registration, but that is no reason why the Court should not order it to be done if it is possible,[3] because the contract between the intending transferor and transferee is valid without the consent of the directors, and is independent of it.[4]

Specific performance has also been granted of a contract entered into for the sale of scrip certificates in a proposed railway company before its incorporation by Act of Parliament.[5] But where shares have been sold in a projected company which is never formed, so that the subject-matter of the contract never has any existence, this would be otherwise. In such a case it has been held that the purchaser is entitled to recover back his money from the vendor as on a failure of consideration.[6]

Transfer of Government stock.

The transfer of Bank Stock, or government securities transferable at the Bank of England, is carried out as follows:—A ticket, which is printed and supplied by the Bank, is issued, with the name of the buyer inserted, by the purchasing broker, and passed

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[1] *Cheale* v. *Kenward*, 3 De G. & J. 27; *Duncuft* v. *Albrecht*, 12 Sim. 189; *Shaw* v. *Fisher*, 2 De G. & S. 11; 5 De G., M. & G. 596.

[2] *Poole* v. *Middleton*, 29 Beav. 646.

[3] *Robins* v. *Edwards*, 15 W. R. 1065.

[4] The contrary appears to have been decided in *Bermingham* v. *Sheridan*, 33 Beav. 660; but this case is not now to be relied on, see ante, p. 104.

[5] *Beckitt* v. *Bilbrough*, 8 Ha. 188; but see *Jackson* v. *Cooker*, 4 Beav. 59, where the vendor had not taken any steps to become proprietor of the shares contracted to be sold.

[6] *Kempson* v. *Saunders*, 4 Bing. 5.

in the same way as the ticket in the case of ordinary registered securities. It is different in form from the ordinary ticket, in that the name of the transferor must be inserted by the ultimate selling member. The ticket is then taken to the Bank, where it is copied into a book kept for the purpose; the transferor signs this book, and also a receipt[1] for the purchase-money, the signatures being witnessed by a clerk of the Bank. Transfers of government securities can be made at the Bank, without fee, on any business day except Saturday[2] up to half-past two, if the ticket has been put forward before one o'clock, otherwise a fee of 2*s*. 6*d*. is charged. This fee is payable by the seller, but it may be claimed by him from the buyer if, owing to delay on the part of the latter, the ticket has not been passed to him at least ten minutes before one. On the transfer of Bank Stock a fee is always payable by the seller, amounting (inclusive of the transfer stamp of 7*s*. 9*d*.) to 9*s*. where the amount of stock transferred is 25*l*. or under, and to 12*s*. where it is above that sum. By the custom of the Stock Exchange these fees are repaid by the purchaser to the transferor, if a jobber, where the amount of stock bought is under 500*l*. A formal identification of the transferor is always required by the Bank, and, therefore, where he is not personally known to them, he is usually accompanied and identified by a broker with whom they are acquainted. The receipt is handed over to the transferee, who is recommended, as a protection against fraud, to sign the book also, and thereby accept the transfer.

[1] This receipt is exempt from stamp duty.

[2] On Saturdays no ticket can be put forward without a fee of 2*s*. 6*d*., and no transfer made after one o'clock, except when it happens to be consol account day.

Government certificates.

Under the National Debt Act, 1870,[1] a person who is entered in the books of the Bank as the holder of any of the Three per Cent. Annuities, may obtain a certificate with coupons annexed, payable to bearer, which would then be transferable without the formalities described above; or the certificate may be converted into a nominal certificate, by inserting the name of any person as the owner, and he alone is then recognized as such at the Bank. In the event of the loss or destruction of a stock certificate or coupon, a new one will be issued by the Bank, on receiving indemnity to their satisfaction. The same regulations are applicable to the other Government funds, also to the India stocks, and to the Metropolitan Board of Works stocks, with the exception that names cannot be inserted in certificates for India stocks.

Transfer of cost-book mining shares.

Shares in cost-book mining companies are ordinarily transferred by a document, in which the transferor acknowledges that he has transferred, and the transferee acknowledges that he has accepted, the shares mentioned. This document is signed by both parties, and forwarded to the purser by the transferee, and is the authority to the purser to register the transferee as a shareholder. By the Stamp Act[2] a duty of sixpence is imposed on such an authority, or on any notice of the transfer sent to the purser.

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[1] 33 & 34 Vict. c. 71, Part V.
[2] 33 & 34 Vict. c. 97, s. 3.

CHAPTER VI.

DEFAULTERS.

Insolvency of member.

If a member of the Stock Exchange becomes unable to fulfil his engagements in the House, he is declared a defaulter by direction of the chairman, deputy-chairman, or any two members of the Committee. The declaration of default is made publicly in the House, but was until lately not communicated in any way to the outside world, it being in fact open to doubt whether such a communication would not have amounted to a libel; the Committee are, however, now empowered by the rules to notify to the public the name of any member who has become a defaulter.

Effect of declaration of default.

It is also open to the defaulter, or his outside creditors, to institute proceedings in bankruptcy or liquidation in the ordinary manner. In either case he ceases ipso facto to be a member of the Stock Exchange, and thereby ceases to be under the jurisdiction of the Committee. It will be seen that the rules applicable in cases of default are only so far binding on the defaulter that he will not be re-admitted as a member unless he, within fourteen days of his failure, deliver to the Official Assignee, or to his creditors, his original books of account, and, if required, give up the name of any principal indebted to him, and otherwise submit himself to the reasonable demands of his creditors. The creditors have also the usual power of making the debtor a bankrupt, although this is rarely done, it being more advantageous to both debtor and creditors that the

estate should be wound up by the Official Assignee under the rules. It being prohibited by the rules for any member to be engaged in another business, the debts of a defaulter (with the exception of ordinary tradesmen's bills, for which, if there are any assets, provision is made) are confined to Stock Exchange debts and advances of money made to him by friends and relations, and it is therefore not so frequently the case as might be imagined that there are hostile creditors who are not bound by the rules, and who would proceed against the debtor in bankruptcy.

Official Assignee.

The Official Assignee and his Deputy are appointed annually by the Committee. Their duty is to obtain from the defaulter his original books of account, and a statement of the sums owing to and by him; to attend meetings of creditors, and to summon the defaulter before such meetings; to enter into a strict examination of every account; to investigate any bargains suspected to have been effected at unfair prices; and to manage the estate in conformity with the rules, regulations, and usages of the Stock Exchange.

Position of trustee in bankruptcy.

The position of the trustee in bankruptcy was discussed in the case of Cooke,[1] a member, who, on becoming unable to meet his engagements, and having been declared a defaulter, had handed over his assets to the official assignee for distribution among his Stock Exchange creditors. Cooke stated that he had no debts outside the Stock Exchange, and the official assignee thereupon apportioned the assets among the Stock Exchange creditors; but it afterwards appeared that he had outside debts, and he was declared a bankrupt. The trustee in the bankruptcy was held entitled to claim from the

[1] *Ex parte Saffery*, 4 Ch. D. 555; 3 App. Cas. 213.

Official Assignee a return of the assets handed to him; the outside creditors were not bound by what had been done, their rights were not affected, and the handing over the assets of the defaulter to the Official Assignee was held to amount to a cessio bonorum, and to be an act of bankruptcy, and therefore void as against the trustee.

Assets.

The assets, which formed the subject of discussion in that case, consisted mainly of a sum of money which stood to the credit of the debtor at his bank. It is to be observed that there is nothing in the rules relating to defaulters which calls upon them to hand over their bank balances; the rules relate to the collection and distribution only of differences, proceeds of stock in course of transit, surety money, and special funds created under specific rules alluded to below; all other payments made by the defaulter, such as that in the case cited, whether made under pressure or not, are voluntary payments, and can only be received by the Official Assignee with due regard to the bankruptcy laws. But it is submitted that it would be otherwise in the case of money collected by virtue of the rules. Proceeds of stock delivered and not paid for may, as we have seen, be followed; surety money and other special claims are payable only for specific application, and form an artificial fund which never belonged to the defaulter, but which is created by the rules, and only exists for the purpose of distribution in a particular way.

Right of assignee to differences.

On this principle it was held in Plumbly's case[1] that the differences collected by the Official Assignee in a case of default do not form part of the assets of the defaulter so as to pass to the trustee in bankruptcy. In that case the defaulter was indebted to

[1] *Ex parte Grant*, 13 Ch. D. 667.

certain non-members and unable to pay; at the same time he had large contracts open in the Stock Exchange. He filed a petition in the bankruptcy court, under which a receiver was appointed, and the same day he gave the usual notice to cause himself to be declared a defaulter. The Official Assignee proceeded in the usual way to close all his accounts, reducing them to a simple pay and receive list of differences; and the receiver in the liquidation, having obtained possession of the defaulter's books, sent out claims in writing on the account day to all members having differences to pay. The Official Assignee, on the other hand, not having the books, put up a notice in the Stock Exchange that all members having differences to pay should pay to him in accordance with the rules. The Official Assignee received the whole of the money, and was held to be entitled to it as against the trustee, with whom there was no privity of contract, and whose rights against any debtor to the bankrupt were not affected by what had been done. In the result, so far as regards any contracts entered into by the bankrupt, upon which there is a difference to pay, his estate is liable[1]; but, on the other hand, it is not possible for the trustee to recover where there is a difference to receive, because when the time arrived for the completion of the contracts the defaulter would not have been ready himself to perform them.

An interesting question may arise as to whether the declaration of default brings the defaulter within section 4 of the Bankruptcy Act,[2] by sub-section (*h*) of which it is enacted that a debtor commits an act of bankruptcy if he "gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts." Where the declara-

[1] See p. 131. [2] 46 & 47 Vict. c. 52.

tion is made in the usual way by the creditors that the defaulter is unable to complete his contracts, it would seem that the statute could not apply, but that it would depend in each case upon the facts.

Assignment of claims to non-members.

Members of the Stock Exchange are not allowed by the rules to sell or assign their claims to non-members without the concurrence of the Committee. Any such assignment must be immediately notified to the official assignee.

Dealings for or with defaulters.

Members are also forbidden to carry on business for a defaulter for his benefit without the consent of his creditors and the sanction of the Committee, but in the case of the default of a broker, permission is generally granted to some other broker to carry on his business pending the settlement of his affairs.[1] Nor are members allowed to deal with a defaulter on his own account until he has been re-admitted as a member of the House.

Private failures.

The fortnightly settlement of all bargains has the elements in it of an absolute test of solvency, and no creditor of a member is allowed to connive at a private failure by accepting less than the full amount of his debt, and if this be done the creditor is liable to refund any money or securities received from the defaulter, provided he be publicly declared within two years from the time of such compromise, the property so refunded being applied to liquidate the claims of subsequent creditors. Any arrangement for settlement of claims, in lieu of bonâ fide money payment on the day when such claims become due, is considered as a compromise, and is subject to this provision. In case the Committee obtain knowledge of any private failure, the name of the defaulter is at once publicly declared.

[1] See ante, p. 65.

Differences on old transactions.

Differences allowed to remain unpaid for more than two business days beyond the day on which they become due cannot be proved against a defaulter's estate, or set off against any difference due to a defaulter at the time of his failure. Differences overdue and paid previously to the day of default do not have to be refunded. The business of the settlement each fortnight is more than can possibly be completed in one day. By this rule, if a member is declared a defaulter within two business days beyond that on which the payment became due, the official assignee treats the default exactly as if it had taken place at eleven in the morning of the pay-day—that is, all members who have received differences have to refund (under Rule 149) such portion as shall reduce their dividends to an equality with the other creditors. Payments made by the defaulter prior to his declaration for stock are not, however, recoverable so far as the average value of the stock on the day of delivery; the difference, however, between such average value and the actual amount paid is refunded.

The reasons for the above rules are obvious; and any departure from them would place the member to whom indulgence is shown in a position which may be fitly compared to that of a person having an unregistered bill of sale over his goods, and trading and obtaining credit under false pretences.

Procedure on the Stock Exchange.

The method of dealing with cases of default on the Stock Exchange is as follows: usually the member himself communicates to the secretary his inability to fulfil his engagements, but should he give private intimation to this effect to a creditor in the House, it is the duty of the creditor not to make any compromise with the defaulter, but to immediately communicate with the chairman, deputy-chairman, or two members of the Committee, in order that the member in default may be immediately declared.

Immediately after the declaration of default, it is the duty of the official assignee to fix publicly the prices current in the market immediately before the declaration, at which prices all persons having accounts open with the defaulter must close their transactions by buying of or selling to the official assignee such stocks, shares, or other securities as the defaulter may have contracted to take or deliver, the differences arising from the defaulter's transactions being paid to or claimed from the official assignee. Any dispute which may arise as to the prices named is decided by two members of the Committee. Differences are not claimed until they become due, that is to say, on the following settling day. Assignee to fix prices.

This closing of contracts by the official assignee reduces the whole of the defaulter's estate (and this must be understood throughout to mean the estate in the Stock Exchange) to a debtor and creditor list of differences, all stocks being eliminated, and the accounts being thereby adjusted, with the defaulter, as it were, dropped out of each series of bargains in which he may have formed part. The amount due by the defaulter when so adjusted has been held to be a "liquidated sum" within the meaning of the Bankruptcy Act, so as to support a petition against him.[1]

The official assignee then proceeds to summon a meeting of creditors, under whose direction he winds up the estate, and pays such dividend as it may afford. A certain anomaly here occurs as to the rights of non-members: the closing of all contracts with the defaulter at the prices fixed by the official assignee is binding only upon members; a principal

[1] *Ex parte Ward*, 22 Ch. D. 132.

of a defaulting broker does not necessarily agree to have his stock so closed, but may give notice to the dealer of his claim to complete,[1] such completion being effected at the last bargain price, provided the principal has himself completed his contract up to that date. Should the principal himself have made default, it is obvious that he cannot exercise this right, but is liable to be sued for the amount due at the time he made default, and for such further amount as may have become due upon the declaration of the broker's default. Should a dealer, having a contract open with a defaulting broker at the time of his declaration, be called upon by the principal, or himself call upon the principal to complete, he thereupon receives from or pays to the principal the difference which otherwise he would have had to receive from or pay to the official assignee. In order, therefore, to maintain the absolute equality amongst creditors provided for by Rule 149, the dealer would refund to, or claim from, the official assignee any such difference, remaining himself in the exact position he occupied at the moment the default was made known.

Receiving claims pro spectively.

A member who has received a difference on an account, prior to the regular day for settling the same, or who has received a consideration for any prospective advantage, whether by a direct payment of money, or by the sale or purchase of stock at a price either above or below the market price at the time the bargain was contracted, or by any other means, prior to the day for settling the transaction for which the consideration was received, must (in case of the failure of the member from whom he received such difference or consideration) refund the

[1] See p. 65.

same for the general benefit of the creditors; and any member who has, under the circumstances above stated, paid or given such difference or consideration to a defaulter, must again pay the same to his creditors; so that, in each case, all persons may stand in the same position as if no such prior settlement or other arrangement had taken place; and a creditor receiving under any circumstances a larger proportion of differences on a defaulter's estate than that to which each of the creditors is entitled, must refund such portion as to reduce his dividend to an equality with the others.

Transactions not recognized.

Claims are not admitted if they arise out of transactions which are prohibited by the rules, or specially stated to be not recognized or not sanctioned by the Committee. The refusal of their sanction, it may be observed, would not affect the rights of the parties to enforce any contract at law. It may practically be taken to amount merely to this: that although the Committee have the power of expelling members for non-fulfilment of contracts generally, yet they will not exercise the power in certain cases; but the contract would still remain good at law as between the parties to it,[1] and might be insisted on if the defaulter were declared a bankrupt.

Priority of claims for differences.

In distributing the assets, the differences due to the defaulter are kept separate, and applied in priority to the settlement of differences due from him, because, owing to the inability of the defaulter to take or deliver stock, all bargains open at the time of default have to be closed at the prices fixed by the official assignee, and a clear moral trace of right exists, although, legally, in the case of default of a dealer, no privity of contract could be established.

[1] *Marten* v. *Gibbon*, 33 L. T., N. S. 561.

These differences generally form the largest portion of the assets.

Priority of claims for securities delivered.

Should a member have delivered securities to a defaulter, before he has been declared, without receiving due payment of the purchase-money, he is entitled, so far as regards their value at the average price on the day of delivery, to be paid pro ratâ, and preferentially, out of assets resulting in any manner from such securities, or derived from the defaulter's own resources; and, should these prove insufficient, he participates as to the balance of such claims, with other creditors in any surety-money of the defaulter.

Claims of non-members.

Non-members are, under certain circumstances, as we have seen, allowed an equal participation of assets, subject to the same conditions as members. This rule applies in the first instance to differences, and should be considered together with Rule 149 above alluded to, but it cannot be imported into all the rules; each case would have to be adjudicated upon by the Committee. A non-member could clearly not be compelled under Rule 149 to refund money received for differences, and if he refused to do so he would not be considered to be entitled to claim at the hands of the Committee any advantages under the rules.

Loans on securities valued below the market price.

In the case of loans of money made upon securities valued at less than the market price, the lender must realize his securities within three clear days from the declaration of the borrower as a defaulter, (unless the creditors consent to a longer delay,) or must take them at a price to be fixed by the official assignees, with appeal to any two members of the Committee. Should the security be insufficient, the difference may be proved against the defaulter's estate.

Loans without security.

No loan without security is admitted as a claim on the differences of a defaulter's estate; nor is any such loan, when of longer duration than two business

days, admitted as a claim on any other of his assets; and should any unsecured creditor receive payment of his loan from a member on the day of his default, such payment being made out of assets not belonging to the defaulter previously to that day, he must refund the amount so received for the benefit of the defaulter's estate.

Dividends due to deceased creditors.

If a creditor of the defaulter be dead, the dividend due to him is paid to his legal representative, or if the creditor be himself a defaulter, it is paid to his creditors.

Re-admission.

The defaulter who has complied with all the foregoing provisions, and whose estate has been distributed in accordance with them, is then eligible for re-admission as a member, provided he has paid from his own resources, independently of his security-money, at least one-third of the amount for which he is liable in the Stock Exchange as the balance of his transactions, whether on his own account or that of principals; or, in the event of his debts being less than the amount which his sureties may be called upon to pay, provided that he has refunded to the sureties one-third of the amount paid by them.

Classes under which defaulters are re-admitted.

The re-admission of defaulters is in two distinct classes. The first class is for cases of failure arising from the default of principals, or from other circumstances, where no bad faith, nor breach of the regulations of the House, has been practised; where the operations have been in reasonable proportion to the defaulter's means or resources; and where his general conduct has been irreproachable; and the second class, for cases marked by indiscretion, and by the absence of reasonable caution.

Effect of re-admission.

The effect of re-admission is not equivalent to a discharge under the bankruptcy laws, nor does it

operate as a discharge or release of Stock Exchange debts; they can only be discharged by payment.[1] On the other hand, one member is not allowed to sue another without the permission of the Committee, so that in the result the whole matter rests with the Committee, who every year, upon the re-admission of members, take specially into their consideration the question of the position of members who have been declared defaulters; and if they think that any such member is in a position to make some further payment, they intimate their opinion to him, and it frequently happens that payments are accordingly made from time to time towards the liquidation of old liabilities.

[1] *Ex parte Ward*, 20 Ch. D. 356.

CHAPTER VII.

SPECIAL SETTLING DAYS AND OFFICAL QUOTATION OF NEW LOANS.

Special settlement.

THE circumstances under which the Committee will grant a special settling day for transactions in the scrip of a new loan, or in the shares of a new company, have already been briefly alluded to. The refusal to fix such a settling day has the effect of rendering nugatory all contracts made previously for the special settlement, and is therefore now never refused unless some real impediment exists to the carrying out of bargains, the result of conspiracy on the part of promoters or directors. But when, either at the time of the application for a settlement, or shortly afterwards, the further application is made to the Committee for a "quotation," that is, for their authority that the bonds of the loan or the shares of the company may be quoted in the official list, then greater strictness is exercised. The grounds upon which the Committee will allow a quotation seem to have been the subject of more misapprehension outside the Stock Exchange than any of the other customs described in these pages. It is often supposed that the requirements of the Committee are directed chiefly, if not entirely, to the soundness and general stability of the loan or company to which they are applied, and the quotation is accordingly looked upon as a sort of certificate of the soundness of a new scheme. In point of fact, the Committee do not, and

Quotation.

could not, profess to do more than ensure due compliance with all necessary formalities in bringing out a new concern, so that its securities may be safely dealt in, without in any way entering into the question of the ultimate probability of success.

An unsuccessful attempt has been made to avoid the decision of the Committee upon the question of the appointment of a special settlement on the ground that their functions are in this respect judicial, and therefore that the personal interest of any of them in the matter in dispute operated as a disqualification.[1]

Official list.

The official list of prices is published daily with the sanction of the Committee; and without their sanction no member is allowed to publish and sell any such list. It consists of two distinct parts: one, the record of bargains marked during business hours, from 11 to 3, which is, strictly speaking, official; and the other, the "closing quotations," which are not really under official supervision at all. Under the heading of "business done," no price is inserted unless the bargain represented has been made in the Stock Exchange, between members, at the market price; nor would it be inserted on the authority of one only of the contracting parties if he were to refuse, when required by a member of the Committee, to disclose the name of the member with whom he had dealt. In the list of "closing quotations" prices are inserted which are supplied to the publisher or his assistants by the dealers in each market, but which are in no way officially revised. In the case of non-current securities these quotations may, owing to the absence of business, be only nominal, and it does not always follow that any one could be found who would be willing to deal at these prices, so that

Business done.

Closing quotations.

[1] *Ex parte Ward*, 20 Ch. D. 356.

they are not always to be depended upon, and are, indeed, in some cases seriously misleading.

Fraud.

In the official list of business done, the Committee guard, as far as possible, against any conspiracy to raise or lower the price of a security, by refusing to allow bargains to be marked which are outside the current quotations, unless specially marked as exceptional transactions; if, therefore, any fictitious bargain should be marked, it is open to other members to object, and to have it struck out on obtaining the authority of the chairman, deputy chairman, or two members of the Committee.

False rumours.

It is a criminal offence to conspire to raise the price of public securities by false rumours, even although it be not shown to be done with a view of defrauding any specified persons. It is a public mischief, complete even independently of any persons becoming purchasers at the enhanced prices.[1]

When settlement or quotation granted.

The requirements of the Committee on an application for a special settlement, or for a quotation, are set out in Rules 127 to 133. They will not recognize new bonds, stock, or other securities issued by any foreign government that has violated the conditions of any previous public loan raised in this country, unless it appears to the Committee that a settlement of existing claims has been assented to by the general body of bondholders. Companies issuing such securities are liable to be excluded from the official list. Nor will the Committee, after the restoration of peace, recognize or allow the quotation of any loan raised by a power whilst at war with Great Britain.

Dealings before allotment.

The power thus reserved by the Committee of refusing a settlement and rendering void all bargains

[1] *R.* v. *de Berenger*, 3 M. & S. 67; see *R.* v. *Esdaile*, 1 F. & F. 213.

previously made affords a remedy against the frauds and dishonest practices to which the custom of dealing in shares before allotment has frequently led. These dealings commence as soon as a new loan or company is made known to the public, and the sort of transactions to which they have occasionally given rise will be found described at length in the Report of the Commission which sat in 1877.

Formation of company.

Under the Companies Acts, 1862 and 1867, it is competent to any seven persons to form a company, fix the amount of its proposed capital, and agree together as to the objects or purposes of the new association. This done, a prospectus is issued to the public, who are invited to send in letters of application for shares accompanied by a deposit of money. Within a limited time, varying perhaps from a few hours to many weeks, the list of applications is closed and the promoters of the new company proceed to allot the shares among the applicants in such numbers and proportions as they please. Sometimes it is declared in the prospectus that a portion of the shares will be reserved for particular purposes and not allotted. Sometimes they are so reserved and not allotted, without notice in the prospectus of any such intention.

In such a system it is obvious that the problem for the promoters of a new undertaking is, how to get the whole or a sufficient number of shares applied for by the public to start the company.

Quotation of premium in newspapers.

It would be beyond the scope of this work to describe the tactics which have sometimes been adopted by promoters in order to attain this end. The only part which the Stock Exchange plays in this process is to provide a market in which it was possible, when dealings before allotment were more frequent than at present, to create a misleading premium,

and to get this premium quoted in the newspapers. It should be observed, that although dealings before allotment are not forbidden by the Rules of the Stock Exchange, business of this kind cannot be "marked" or quoted in the official list, and a new undertaking is not officially known or recognized until the application for a special settlement.

Cornering.

The Stock Exchange has, however, been compelled to take measures for its own protection and that of the public against the manœuvres of unscrupulous persons interested in floating companies. It has happened that promoters have bought the shares of their company to such an extent as to obtain an unfair control of the market, having the allotment in their own hands and the power, if they choose, to allot only to themselves and their friends, possibly under conditions which prevent sale.

Accordingly the rules of the Stock Exchange, as administered by the Committee, provide methods of defeating such combinations. They hear and entertain any objection that any member may make to the settlement being granted; and if it is shown to them that the promoters have by their dealings, coupled with the allotment, practically obtained the command of the market, and placed the dealers or sellers in an unfair position, the settlement is refused and all bargains are thereby rendered void.

It has been attempted on behalf of a broker to repudiate a bargain in shares of a new company on the ground that the special settlement, on which such a bargain is contingent, was obtained by fraud. It was held, however, that under such circumstances, the validity of a bargain entered into by persons who were not parties to the fraud, is not affected.[1]

[1] *Ex parte Ward*, 20 Ch. D. 356.

Liability for false statements.

If false statements are made to the Committee in order to induce them to grant quotation or settlement, the guilty parties may at law be made criminally

Criminal.

or civilly liable. Thus, in the Eupion Gas case,[1] the promoters of the company were convicted on a charge of agreeing together by false pretences to deceive the members of the Committee, and to induce them, contrary to the true intent and meaning of the rules, to order a quotation of the shares of the company in the official list, and thereby to induce and persuade divers of the liege subjects who should thereafter buy and sell the shares of the said company, to believe that the said company was duly formed and constituted, and had in all respects complied with the rules, so as to entitle them to have their shares quoted.

Civil.

The civil liability of promoters under such circumstances at the suit of any person suffering loss in consequence, would seem to follow directly from the general principle of law that every man is held responsible for the consequences of a false representation made by him to another upon which a third person acts, and so acting is injured or damnified; provided it appear that such false representation was made with the intent that it should be acted upon by such third person in the manner that occasions the injury or loss, and provided also that the injury so sustained is the immediate and not the remote consequence of the representations so made.[2]

Thus, in the case of Bedford *v.* Bagshaw[3] the plaintiff, knowing the rule of the Stock Exchange, and seeing certain shares quoted in the official list, was led to believe that two-thirds of the scrip had

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[1] *R.* v. *Aspinall*, 1 Q. B. D. 730; 2 Q. B. D. 48.

[2] Notes to *Pasley* v. *Freeman*, 2 Sm. L. C. 64.

[3] 4 H. & N. 538.

been subscribed for, and he had suffered loss by buying some of the shares in the market in that belief. He was held entitled to recover the amount of his loss against one of the directors who had procured the quotation by knowingly misstating to the Committee the amount of scrip subscribed for. The director was considered to have acted fraudulently and to have made representations to the Committee with a view to induce persons to believe in the existence of a certain state of things; and it was held by Pollock, C.B., that all persons buying shares on the Stock Exchange must be considered as persons to whom it was contemplated that the representation would be made, and that therefore the plaintiff had a good cause of action. This judgment was thoroughly approved of by Page Wood, V.-C., in a subsequent case,[1] but was afterwards in the House of Lords characterized by Lord Chelmsford[2] as an extraordinary decision. He pointed out that no representation had been made which reached the eyes or ears, of the plaintiff, and that it was his knowledge of the rules alone which led him to assume that a representation had been made, and to appropriate it to himself, and, therefore, it could not be taken to be made to anyone who was ignorant of those rules. This certainly qualifies the judgment of Pollock, C.B., very materially, but it is submitted that it does not touch the question of the right of action by a person who is proved to have known that the representation was made and to have acted directly on the faith of it.[3]

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[1] *Barry* v. *Crosskey*, 2 J. & H. 22.

[2] *Peek* v. *Gurney*, L. R., 6 H. L. 397.

[3] See also *Seymour* v. *Bagshaw*, 18 C. B. 903.

APPENDIX.

RULES *and* REGULATIONS *for the conduct of Business on the* STOCK EXCHANGE.

COMMITTEE.

1. On the 20th day of March in every year, or if that day should be a Sunday or Bank Holiday, then on the following business day, a ballot by the members shall be held for the appointment of a Committee of thirty members, who shall be called the "Committee for General Purposes," and shall hold office for twelve months from the 25th of March next following the date of their election but shall be re-eligible. Notice of such ballot shall be publicly exhibited in the Stock Exchange during fourteen days previous to the same being held, and a further notice containing the names of the persons on the existing Committee willing to serve again, and of all new candidates, their proposers and seconders, shall be publicly exhibited in like manner during three business days previously to such ballot being held. The members on the said Committee retiring shall remain in office until the 25th of the same month of March in which their successors shall have been elected, and in case no election shall be made at any such ballot as aforesaid, the members retiring shall remain in office until the 25th day of March in the following year, or until a valid election shall have taken place under Clause 92. Four business days' notice previous to any ballot of intention to propose any person not already on the Committee, and eligible for re-election, must be given to the Secretary of the Committee in writing signed by two members, and the ballot shall be by printed lists containing the names of the persons willing to serve again, and of all persons so proposed, distinguishing the former from the latter. In case no valid election be made on the day hereinbefore appointed for that object, the Committee may forthwith, or at any time thereafter, prior to the next ordinary yearly ballot, cause a ballot to be held for such election, on a day to be fixed by the Committee for that purpose, and in all respects, as lastly hereinbefore provided; and the Committee to be appointed by such ballot shall remain in office until the 25th day of March then next following. Every ballot for the election of the Committee for General Purposes or for supplying vacancies in the Committee shall be held at the Stock Exchange, and, except as specially provided by these presents, shall be conducted in accordance with the existing practice and usage in reference to such elections. In case of dispute as to what such practice and usage has been in any particular, the Committee shall from time to time determine the same by resolution.—*Deed of Settlement*, sect. xii. cl. 90.

2. No person shall be elected to the said Committee for General Purposes who shall not for the space of five years immediately preceding the day of election have been a member, and every person on ceasing to be a member shall *ipso facto* vacate his seat on the Committee.—*Deed of Settlement*, sect. xii. cl. 91.

Every member is entitled to vote although he may not have paid his subscription.

3. Any occasional vacancy in the said Committee for General Purposes shall be filled up by a ballot of members to be held for the purpose on a day to be fixed by the Committee for General Purposes, and of which seven days' previous notice shall be given by the same being publicly exhibited in the Stock Exchange. Similar notice of nomination shall be given as provided by Clause 90. The surviving or continuing members on the Committee, notwithstanding any vacancy in their number, may act until the same shall be filled up.

Any person elected to supply an occasional vacancy in the said Committee shall hold office for the residue of the year in which he shall be elected, and shall then retire with the other members of the said Committee.—*Deed of Settlement*, sect. xii. cls. 92, 93.

4. The said Committee for General Purposes shall meet at such times as they may from time to time appoint, and shall determine their own quorum (the same to be not less than seven members actually present) and mode of procedure.

Until otherwise determined, the quorum of the said Committee shall be seven members personally present.—*Deed of Settlement*, sect. xii. cls. 98, 99.

5. The said Committee for General Purposes shall regulate the transaction of business on the Stock Exchange, and may make rules and regulations not inconsistent with the provisions of these presents respecting the mode of conducting the ballot for the election of the Committee and respecting the admission, expulsion or suspension of members and their clerks, and the mode and conditions in and subject to which the business on the Stock Exchange shall be transacted, and the conduct of the persons transacting the same, and generally for the good order and government of the members of the Stock Exchange, and may from time to time amend, alter, or repeal such rules and regulations, or any of them, and may make any new, amended, or additional rules and regulations for the purposes aforesaid. —*Deed of Settlement*, sect. xii. cl. 95.

6. At their first ordinary meeting after the annual election, the Committee shall elect, from amongst themselves, a chairman and deputy chairman, who shall respectively hold office till the 25th of March next ensuing. In case either appointment shall become vacant, it shall be filled up as soon afterwards as possible. When the chairman and deputy-chairman are absent, the meeting shall appoint a chairman. In all cases when, on a division, the votes are equal, the chairman shall have a second or casting vote.

7. At the first meeting of the Committee, one of the members of the Stock Exchange shall be chosen secretary, who shall hold his office during their pleasure; and three other members shall be appointed to act as scrutineers at elections, who shall report the result of the ballot to the Committee, and to the Stock Exchange.

8. The ordinary meetings of the Committee shall be held every

Monday at one o'clock, commencing on the first Monday after each annual election. But a special meeting of the Committee may at any time be called by the chairman or deputy-chairman, or (in their absence, or in case of their refusal), by any three members of the Committee. One hour's notice, at least, shall be posted in the Stock Exchange.

9. If a quorum be not assembled within a quarter of an hour after the time appointed for meeting, the chairman or deputy-chairman may adjourn such meeting.

10. The business of the Committee shall be divided into two classes, viz.:—

Routine.
Special.

The first, to comprehend the reading of minutes for the purpose of confirmation, or otherwise, the admission of members and clerks, fixing settling days, &c.;

The second, the investigation of claims and other matters relating to the interests of the members, or of the public.

The printed notices of the meetings of the Committee posted in the House shall contain the words on "routine" or "special" business.

11. No resolution of the Committee shall be valid or put in force, until confirmed, unless it relate to the shutting of the house, the admission of members, the re-admission of defaulters, the fixing of ordinary settling days, or the granting or refusing of special settlements, and official quotations. In cases which do not admit of delay, two-thirds of the Committee present must concur in favour of the immediate confirmation of the resolution, and the urgency of the case must be stated on the minutes. In all cases brought under the consideration of the Committee, their decision, when confirmed, is final, and shall be carried out forthwith by every member concerned.

12. Notice shall be given in writing of any alteration of, or addition to, the rules, and a copy of such alteration of a rule, or proposed new rule, shall be sent to each member of the Committee.

After the reading of the minutes, the consideration of any alteration of a rule, or proposed new rule, shall take precedence of all other business, except the re-admission of defaulters and cases of urgency.

13. All communications to the Committee shall be made in writing; and no anonymous letter shall be acted upon.

14. Members and their clerks shall attend the Committee when required; and shall give such information as may be in their possession relative to any matter under investigation.

15. The Committee may expel any of their own members from the Committee who may be guilty of improper conduct. The resolution for expulsion must be carried by a majority of two-thirds in a Committee specially summoned for the purpose, and consisting of not less than twelve members, and must be confirmed by a majority of the Committee, at a subsequent meeting, specially summoned.

16. The Committee may expel or suspend any member of the Stock Exchange, who may violate any of the rules or regulations, or fail to comply with any of the Committee's decisions, or who may be guilty of dishonourable or disgraceful conduct. The resolution for expulsion or suspension, must be carried by a majority of three-

fourths in a Committee specially summoned for the purpose, and consisting of not less than twelve members, and must be confirmed by a majority of the Committee, at a subsequent meeting, specially summoned.

17. The Committee may censure, or suspend for a period not exceeding two months, any member of the Stock Exchange who may conduct himself in an improper or disorderly manner, or who may wilfully obstruct the business of the house. Any resolution adopted under this rule must be carried by a majority of three-fourths of the members present.

18. The Committee for General Purposes for the time being may, in their absolute discretion, and in such manner as they may think fit, notify, or cause to be notified to the public that any member has been expelled, or has become a defaulter, or has been suspended, or has ceased to be a member, and the name of such member. No action or other proceeding shall under any circumstances be maintainable by the person referred to in such notification against any person publishing or circulating the same, and this rule shall operate as leave to any person to publish and circulate such notification, and be pleadable accordingly.

19. The Committee may dispense with the strict enforcement of any of the regulations; but such power shall only be exercised by a Committee specially convened for that purpose; and consisting of not less than twelve members, three-fourths of whom must concur in the resolution for such dispensation. The resolution must be confirmed by a majority of the Committee, at a subsequent meeting, specially summoned.

Admissions, Re-elections, and Re-admissions.

20. Every member desirous of being re-elected shall, on or before the 4th of March in each year, address to the secretary a letter, of the form inserted in the Appendix.

Each member of a partnership is required to sign a separate letter.

21. The Committee shall, on the first Monday in March, proceed to admit and re-elect such persons, as they shall deem eligible to be members of the Stock Exchange, for one year, commencing on the 25th of March then instant, or last preceding the admission of such subscriber, at the amount fixed by the trustees and managers for such admission.

22. Every applicant for admission, previously to being balloted for, must be recommended by three members of not less than four years' standing, who have fulfilled all their engagements, and who are not indemnified. Each recommender must engage to pay five hundred pounds to the creditors of the applicant, in case the latter shall be declared a defaulter within four years from the date of his admission.

If the applicant has been a clerk in the Stock Exchange for four years previously to his application, two recommenders only shall be required, who must each enter into a similar engagement for three hundred pounds.

No member shall be surety for more than three new members at the same time.

23. No foreigner shall be admissible, unless he shall have been naturalized for a period of two years.

24. A notice of each application, with the names of the recommenders, stating that they are not, and do not expect to be, indemnified, shall be posted in the Stock Exchange, at least eight days before the applicant can be balloted for.

25. Members are required to have such personal knowledge of applicants whom they recommend, and of their past and present circumstances, as shall satisfy the Committee as to their eligibility.

26. Any recommender of a new member, who at the time of such member's admission shall have avowed that he was not, and that he did not expect to be, indemnified, and who shall subsequently receive any indemnity, shall, in the event of the new member failing within the time of his liability, be compelled to pay to the creditors any sum so received, in addition to the amount for which he originally became surety.

27. An applicant may be recommended by a firm, but not by two members of the same firm, nor by two members, one of whom is authorized clerk to the other, nor by a member whose authorized clerk the applicant may be, nor by a member whose sureties are still liable.

28. If a member enter into partnership with, or become authorized clerk to, any one of his sureties, or if any one of his sureties cease to be a member during his liability, he shall find a new surety for such portion of the time as shall remain unexpired; and until such substitute is provided, the Committee will prohibit his entrance to the Stock Exchange.

29. No applicant is admissible, if he be engaged as principal or clerk in any business other than that of the Stock Exchange, or if his wife be engaged in business, or if he be a member of, or subscriber to, any other institution where dealings in stocks or shares are carried on; and if subsequently to his admission he shall render himself subject to either of those objections, he shall thereby cease to be a member.

30.* No applicant for admission, who has been a bankrupt, or has been proved to be insolvent, or has compounded with his creditors, shall be eligible, unless he shall have paid 10*s.* in the pound; nor then, until two years after he shall have obtained his official discharge, or fulfilled the conditions of his deed of composition, unless he shall have paid his debts in full: and no applicant having more than once been a bankrupt, or insolvent, or compounded with his creditors, shall be eligible for admission until he shall have paid in full.

31. A member, intending to object to the admission, or re-admission of an applicant, or to the re-election of a member, is required to communicate the grounds of his objection to the Committee by letter, previously to the ballot, or re-election.

32. If any applicant for admission, re-admission, or re-election, be rejected, he shall not be balloted for again before the 25th of March then next ensuing. Defaulters who have been rejected upon two ballots can only be re-admitted by a majority of three-fourths in a

* This Rule does not apply to the re-admission of members of the Stock Exchange.

Committee specially summoned, and consisting of not less than twelve members.

33. Any former member, who, not having been a defaulter, bankrupt, or insolvent, shall have discontinued his subscription for one year, must be recommended for re-election by two members, but without security. If he shall have discontinued his subscription for two years, he will be considered a new applicant, and must apply for admission in the usual way.

34. A notice of every defaulter, bankrupt, or insolvent, applying for re-admission, shall, at the discretion of the Committee, be posted (without recommenders) in the Stock Exchange, at least twenty-one days, and the Committee shall then take the application into consideration, upon the report of the Sub-Committee, appointed according to Rule 165. If, however, the Committee think fit, a defaulter may be re-admitted without the above notice, upon a report of the Sub-Committee, and a certificate signed by such a number of the creditors as may be satisfactory to the Committee, that all liabilities have been *bonâ fide* discharged in full. In all such cases, after the defaulter has been re-admitted by ballot, it shall be decided by show of hands, whether his name shall be posted in the Stock Exchange as having paid 20*s.* in the pound; or, whether it shall be placed in one of the two classes mentioned in Rule 166.

35. The re-admission of defaulters shall take precedence of all other business.

36. The chairman of the Committee, in addition to any other questions that may appear to be necessary, shall to each of the recommenders of an applicant, put the following:—

Has the applicant ever been a bankrupt, or has he ever compounded with his creditors? and if so, within what time, and what amount of dividend has been paid?

Would you take his cheque for three thousand pounds in the ordinary way of business?

Do you consider he may be safely dealt with in securities for the account?

37. The chairman shall require every new applicant to acknowledge his signature to the form of application, and shall ask such questions as may be deemed necessary.

Appendix to Admissions and Re-elections.

1. Form of letter to be signed by persons desirous of becoming members of the Stock Exchange:—

"To the Secretary of the Committee for General Purposes.

"SIR,

"You will please to acquaint the Committee for General Purposes that I am desirous of being admitted a member of the Stock Exchange for the year commencing on the 25th of March, 18 , upon the terms of and under and subject in all respects to the Rules and Regulations of the Stock Exchange, which now are, or hereafter may

be, for the time being in force. I have read the Rules and Regulations of the Stock Exchange.
I have read the resolution at the back of the letter.
I am a British subject, and of age.
I am (*state whether married or unmarried*).
My residence is
My office is
My bankers are
I am not engaged in any business, except such as is transacted at the Stock Exchange, nor am I clerk in any public or private establishment unconnected with the Stock Exchange, nor a member of, or subscriber to, any other institution in which dealings in stocks or shares are carried on.

"I am, Sir, yours faithfully,
"_____."

"We recommend Mr. as a fit person to be admitted a member of the Stock Exchange; and in case he shall be publicly declared a defaulter within four years from the date of his admission, we each of us hereby engage to pay to his creditors, upon application, the sum of five hundred pounds,* to be applied in discharge of the said defaulter's debts, in the Stock Exchange."

The following Rule is to be printed on the back of the letters of application:—

> 28. If a member enter into partnership with, or become authorized clerk to, any one of his sureties, or if any one of his sureties cease to be a member during his liability, he shall find a new surety for such portion of the time as shall remain unexpired; and until such substitute is provided, the Committee will prohibit his entrance to the Stock Exchange.

The secretary shall send to every member, on his admission, a letter to the following effect:—

"Sir,

"I am directed to inform you, that you are elected a member of the Stock Exchange, for the year commencing on the 25th of March, 18 , upon the terms of, and under and subject in all respects to the rules and regulations of the Stock Exchange, which now are, or hereafter may be, for the time being in force. You will be entitled to admission to the house upon payment of your entrance fee and subscription to the credit of the managers.

"I am, Sir, &c., &c.,
"Francis Levien,
"Sec. to the Committee for General Purposes."

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* The sureties must state opposite to their signatures that they are not, and that they do not expect to be, indemnified for the security they give, and must attend, together with the person recommended, at one o'clock of the day on which the ballot is to take place; and they are required to have such personal knowledge of the applicant and of his past and present circumstances, as may enable them to give a satisfactory account of the same to the Committee.

2. Form of the letter to be signed by persons desirous of being re-elected members of the Stock Exchange.

Application for Re-election.

"To the Secretary of the Committee for General Purposes.

"SIR,

"You will please to acquaint the Committee for General Purposes, that I am desirous of being re-elected a member of the Stock Exchange, for the year commencing on the 25th of March, 18 , upon the terms of, and under and subject in all respects to the Rules and Regulations of the Stock Exchange, which now are, or hereafter may be, for the time being in force.

My residence is

My bankers are

The under-named will continue to act as my clerk.

I am engaged in partnership with

I am not engaged in any business, except such as is transacted at the Stock Exchange, nor am I clerk in any public or private establishment unconnected with the Stock Exchange, nor a member of, or subscriber to, any other institution in which dealings in stocks or shares are carried on.

"I am, Sir, your obedient servant,

"_____."

Name of Clerk.	Here state whether authorised or not to transact business, and if the party be a Member, it is to be so stated.

The subscription is to be paid to the credit of the managers, within twenty-one days from the 25th March.

3. The secretary shall furnish each applicant with a book of the Rules and Regulations, which must be carefully read by him previous to his admission.

The secretary shall send to every member, on his re-election, a letter to the following effect—

"SIR,

"I am directed to inform you, that you are elected a member of the Stock Exchange, for the year commencing on the 25th of March, 18 , upon the terms of, and under and subject in all respects to the Rules and Regulations of the Stock Exchange, which now are, or hereafter may be, for the time being in force. You will please to pay your subscription to the credit of the managers.

"I am, Sir, &c., &c.,

"FRANCIS LEVIEN,

"Sec. to the Committee for General Purposes."

PARTNERSHIPS.

38. In every year as soon as possible after the general election, a list of partnerships shall be made out by the secretary. In case of a new or alteration in an old partnership, the same shall be communi-

cated to the Committee; and no partnership shall be considered as altered or dissolved until such communication be made.

All notices relative to partnerships must be signed by the parties, countersigned by the secretary, and posted in the Stock Exchange.

39. The failure of a firm dissolves the partnership, and, should the members of such firm, when re-admitted, desire to renew the partnership, notice thereof must be given to the Committee, in the usual way.

40. No member of the Stock Exchange shall be allowed to enter into partnership with any person who is not a member: nor shall any member form a partnership during the liability of his recommenders, without their written consent; such consent to be communicated to the Committee.

41. Members dealing generally together in any particular stock or shares, and participating in the result, shall be held responsible for the liabilities of each other, not only in the shares or stock in which they are jointly interested, but also in any other description of securities in which either of them may transact business, unless they forward a written notice to the secretary, specifying the particular shares or stock in which they deal on joint account.

No limited partnership shall consist of more than two members, or firms, nor shall such partnership be carried on in any other markets than those in which both parties are dealing.

This rule to be applicable also to members allowing others to deal with their shares, stock, or capital, and participating in the result.

Form of notice to be countersigned by the secretary, and posted in the Stock Exchange.

(*Notice.*)

"We, the undersigned, beg to inform the Committee for General Purposes that, from this day until further notice, we hold ourselves jointly responsible to the Stock Exchange for all transactions entered into by either of us in

{ _____
{
{ _____

"We are, Sir, &c.
"_____."

42. The Committee will not allow members or their authorized clerks to act in the double capacity of brokers and dealers; nor will they sanction partnerships between brokers and dealers.

CLERKS.

43. No clerk shall be admitted without the permission of the Committee; nor unless he be seventeen years of age.

No person, who is not eligible for admission as a member, can be admitted as a clerk, with the exception of persons under age, who are ineligible as members on that account only.

Defaulters can be admitted as clerks only by a majority of three-fourths in a Committee specially summoned, and consisting of not less than twelve members.

No clerk shall be authorized to transact business until he has been two years in the Stock Exchange, and is twenty years of age.

No authorized clerk shall transact business as a dealer in any market other than that in which his employer is engaged.

44. A member, desirous of obtaining the admission of a clerk, or of employing another member as his clerk, shall make application in writing to the Committee, and state whether such clerk is to be authorized, or not authorized to transact business.

When application is made for the admission of a clerk who has previously been engaged in business out of the Stock Exchange, the name and address of such person, together with the name of the member applying for his admission, shall be posted in the Stock Exchange eight days prior to the application being considered by the Committee.

No clerk shall enter the Stock Exchange until his employer has received from the secretary notice of his admission.

45. A member, applying for the admission of an authorized clerk, must first obtain the consent of his sureties in writing, if the term of their liability be not expired.

46. A member who may part with a clerk, or be desirous of withdrawing from an authorized clerk, the permission to transact business on his account, shall give notice in writing to the secretary, who shall forthwith communicate the same to the Stock Exchange, in the usual manner.

47. A list of authorized clerks (distinguishing those who are also members) and the names of their employers, shall be posted in the Stock Exchange, and the authority shall be considered to continue until revoked by letter to the Committee.

48. A member authorizing a clerk to transact business shall not be held answerable for money borrowed by the clerk, without security, unless he shall have given special authority for that purpose.

49. A member employed as clerk, whether authorized or unauthorized, shall not make any bargain in his own name.

50. No clerk shall be allowed to apply for an allotment in loans or shares, without the sanction of his employer, who shall be responsible for the payment of the deposit on the shares or stock so applied for.

51. Clerks of defaulters are excluded from the Stock Exchange. Clerks of deceased members may, by permission of two members of the Committee, attend to adjust unsettled accounts.

General Rules applicable to Stock Exchange Transactions.

52. The Stock Exchange does not recognize in its dealings any other parties than its own members: every bargain, therefore, whether for account of the member effecting it, or for account of a principal, must be fulfilled according to the Rules, Regulations and usages of the Stock Exchange.

53. No member shall attempt to enforce by law a claim arising out of Stock Exchange transactions against a member or defaulter, or against the principal of a member or defaulter, without the consent of such member, of the creditors of the defaulter, or of the Committee.

The Committee have power to intervene in cases where the principal of a member shall attempt to enforce by law a claim which is not in accordance with the Rules, Regulations, and usages of the Stock Ex-

change, and will deal with such cases as the circumstances may require.

54. If a non-member shall make any complaint against a member, the Committee shall in the first place consider whether the complaint is fitting for their adjudication, and in the event of the Committee deciding in the affirmative, the non-member shall previously to the case being heard by the Committee sign a consent in writing, as follows:—

"*To the Committee for General Purposes of the Stock Exchange, London;*

"In the matter of a complaint between and

"GENTLEMEN,

"I do hereby consent to refer this matter to you, and I undertake to be bound by the said reference, and to abide by and forthwith carry into effect your award, resolution or decision in this matter, in the same manner as if I were a member of the Stock Exchange; and I further undertake not to institute, prosecute, or cause, or procure to be instituted, or prosecuted, or take any part in proceedings, either civil or criminal, in respect of the case submitted. And I consent that the Committee may proceed in accordance with their ordinary rules of procedure, and I undertake to be bound by the same. Also that the Committee may proceed *ex parte* after notice, and that it shall be no objection that the members of the Committee present vary during the enquiry, or that any of them may not have heard the whole of the evidence, and any award or resolution of the Committee, signed by the chairman for the time being, shall be conclusive that the same was duly made or passed, and that the reference was conducted in accordance with the practice of the Committee. And I hereby consent that such award or resolution shall be deemed to be an award under the Common Law Procedure Act, 1854, and be enforceable accordingly, and that the same may be made a rule of the Queen's Bench Division of the High Court of Justice.

"I remain,

"Gentlemen,

"———."

55. If a member shall do a private bargain, either for money or time, with an individual member of a firm in the Stock Exchange, such bargain being concealed from the firm, both members shall be expelled.

56. If any member or authorized clerk shall do a bargain, either for money or time, with an authorized or unauthorized clerk, for account of such clerk, they shall be liable to expulsion.

57. The Committee particularly caution members against transacting speculative business for clerks in public or private establishments, without the knowledge of their employers.

Members disregarding this caution are liable to be dealt with in such manner as the Committee may deem advisable.

58. No application which has for its object to annul any bargain in the Stock Exchange shall be entertained by the Committee, unless upon a specific allegation of fraud or wilful misrepresentation.

59. The Committee will not recognise any dealing in letters of allotment, either of loans, or shares in new companies.

60. A member applying for shares or stock or loans of public companies, and neglecting to pay the deposit on the same, shall be considered to have violated a contract, and shall be compelled to fulfil his engagement.

61. The Committee will not recognise new bonds, stock or other securities, issued by any foreign government that has violated the conditions of any previous public loan raised in this country, unless it shall appear to the Committee that a settlement of existing claims has been assented to by the general body of bondholders.

Companies issuing such securities will be liable to be excluded from the official list.

62. The Committee will not, after the restoration of peace, recognise or allow the quotation of any loan raised by a power whilst at war with Great Britain.

63. No member shall enter into bargains in prospective dividends on shares or stock of railway or other companies.

64. All disputes between members not affecting the general interests of the Stock Exchange, shall be referred to arbitration; and the Committee will not take into consideration such disputes, unless arbitrators cannot be found, or are unable to come to a decision.

N.B.—The Committee strongly recommend that all bargains be checked on the following day.

65. No member shall be obliged to take a reference for payment to a non-member; nor shall he be obliged to pay a non-member for securities bought in the Stock Exchange.

66. Cheques must be passed through the clearing house, unless the drawer consent to their being otherwise presented. But if a member require bank notes in payment for securities sold, without having made such stipulation at the time of making the bargain, he must give notice to that effect before half-past eleven o'clock on the day of delivery, and payment shall be made upon delivery of the securities, or the bank receipt.

67. A seller, having transferred or delivered stock or other securities, has a right to demand payment from the member who passed him the ticket; and in case the seller apply to the issuer of the ticket, and fail to obtain payment, or receive a cheque which is dishonoured, the member from whom he received the ticket shall make immediate payment.

68. A seller may require payment of the difference between the price marked on the ticket, and the making-up price of the day on which the ticket is tendered, but if such making-up price be above the price of sale, he shall only be entitled to claim the difference up to the price of sale.

69. In cases of loans, the lender is not entitled to place beyond his control shares or stock received as security for money advanced; and he may, after reasonable notice, and upon payment of the principal, together with interest up to the time for which the loan was originally made, be required to return the identical bonds, or to retransfer the shares or stock given as security for such loan. But this liability does not apply to a member who has taken in shares or stock upon continuation.

All continuations shall be effected at the making-up price, or at the then existing market price.

70. Buying-in or selling-out must be effected publicly by the Secretary to the Committee for General Purposes, or by the clerks of the House in their respective markets, who shall trace the transaction to the responsible party, and claim the difference thereon.

71. Bonds, shares, or other securities, shall not be bought in, while they are known to be out of the control of the seller for the payment of calls, or the receipt of interest, dividends or bonus; and the Committee, on being applied to, will fix a day on which they may be bought in.

72. In the settlement of all bargains, dividends are to be accounted for at the net amount receivable after deduction of income tax.

In the case of dividends payable only abroad, the Secretary to the Share and Loan Department shall fix a price for the coupons in sterling money, which shall be posted in the Stock Exchange, and at which the dividends shall be accounted for.

Securities to bearer are not deliverable on the settling-day without the current coupon.

Securities to bearer, with coupon payable on the settling-day, shall be delivered ex coupon.

When the dividend is payable after the settling-day, outstanding bargains in securities to bearer shall be settled with the current coupon, otherwise the buyer shall have the right to demand the market value of the coupon, which, in case of dispute, shall be fixed by the Secretary to the Share and Loan Department.

73. All optional bargains for the settlement shall be declared at a quarter before three o'clock two days before the settling-day.

74. The hours of business in the Stock Exchange are from eleven until three o'clock. On Saturdays business will close at one o'clock.

When the ticket-day is fixed for a Saturday, the House will be kept open until three o'clock, for the purpose of the settlement only, the regulations for which shall be the same as on ordinary ticket-days.

The Stock Exchange will be closed on the following days, viz.:—1st January, Easter Monday, 1st May, Whit Monday, the first Monday in August, 1st November, 26th December, unless specially ordered otherwise by the Committee.

When either the 1st January, 1st May, 1st November or 26th December falls on a Sunday, the House will be closed on the day following.

Rules applicable to English, India, Corporation and Colonial Government Registered Stocks, &c.

75. All bargains, when no time is specified, shall be considered as made for the existing consols account, except bargains in colonial government stocks, which shall be for the foreign settling-day.

76. The Committee will not recognise any bargain for a future account, if it shall have been effected more than eight days previously to the close of the pending account.

77. An offer to buy or sell a sum of stock, at a price named, is binding as to any part thereof; and an offer to buy or sell stock, when no amount is named, is binding to the amount of 1,000*l.* stock.

78. If the seller of stock shall not receive from the purchaser a transfer-ticket by ten minutes before one o'clock, he may demand

two shillings and sixpence for each transfer-fee, which may be paid for the actual transfer of such stock. On a settling-day, if the transfer-ticket is not delivered by a quarter before one o'clock, the seller may claim of the purchaser two shillings and sixpence for every 1,000*l.* stock; and if he shall not receive a transfer-ticket before half-past one o'clock, on the day it was contracted to deliver the said stock, he may sell out the same, and claim of the person who held the ticket at half-past one o'clock any loss or charge incurred. On Saturdays stock may be sold out at a quarter to one o'clock.

79. Stock bought for a specified day, and not then delivered, may be bought in on the following day at eleven o'clock, and the member causing the default shall pay any loss incurred.

80. Stock receipts must be delivered by *half-past three o'clock;* but if a deliverer elect (under Rule 67) to deliver a stock receipt to the member with whom he has dealt (such member not being the issuer of the ticket), he shall deliver such receipt by a *quarter-past three o'clock.*

Stock receipts must be delivered by half-past one o'clock on Saturdays.

Omnium or scrip, not paid in full, must be delivered before two o'clock, or by one o'clock on Saturdays.

81. When stock is borrowed without any stipulation as to its return, the borrower or lender may be called upon to deliver or take it on the following day, whether a regular transfer-day or not.

82. In cases of loans on the deposit of stock, when the striking of the balances for dividend takes place before repayment of the loan, the lender shall allow the dividend, deducting interest thereon till the day of payment of, and at the same rate as, the loan.

83. Purchasers of bank stock may require, at the seller's expense, as many transfers as there are even thousand pounds stock in the sum bargained for.

84. The clerk of the House shall fix the making-up prices, by taking the average price between eleven and one o'clock on each of the two days preceding the account, and between eleven and a quarter before one o'clock on the settling-day; and no making-up shall be binding unless at such fixed prices.

Rules applicable to Securities of Companies deliverable by Deed of Transfer.

85. Bargains in stocks and shares, when no time is specified, shall be considered as made for the existing account; but *those made on a ticket-day,* shall, unless otherwise specified, be for the ensuing account.

86. The Committee will not recognise any bargain in shares or stock effected for a period beyond the ensuing two accounts.

87. An offer to buy or sell an amount of shares or stock at a price named, is binding as to any part thereof that may be a marketable quantity; and an offer to buy or sell shares or stock, when no amount is named, is binding to the amount of ten shares, if in value under 500*l.* or a number not exceeding in value that sum, or to the amount of 1,000*l.* stock.

88. The seller of shares or stock is responsible for the genuineness and regularity of all documents delivered, and for such dividends as may be received, until reasonable time has been allowed to the transferee to execute and duly lodge such documents for verification and

registration. When an official certificate of registration of such shares or stock has been issued, the Committee will not (unless bad faith is alleged against the seller) take cognizance of any subsequent dispute as to title, until the legal issue has been decided, the reasonable expenses of which legal proceedings shall be borne by the seller.

89. The Committee will not (except under special circumstances) interfere in any question arising from the delivery of shares, stock, bonds, or debentures by transfer in blank.

90. The buyer who takes up securities deliverable by deed of transfer shall, before twelve o'clock on the ticket-day, issue a ticket with his own name as payer of the purchase-money, which ticket shall contain the amount and denomination of the stock or security to be transferred; the name, address and description of the transferee in full; the price, the date and the name of the member to whom the ticket is issued. Each intermediate seller, in succession, to whom such ticket shall be passed, shall endorse thereon the name of his seller.

All tickets representing stock or shares which, at the time, are subject to arrangement by the settlement department, shall be passed through the accounts at the making-up price of the day before the ticket-day, and the stock or shares paid for at that price; but the consideration money in the deed must be at the price on the ticket.

A member receiving a ticket from the issuer after twelve o'clock on the ticket-day, shall note the same on the back of the ticket; it is also required that the member who first receives a ticket

After ..... One o'clock,
After half-past One o'clock,
After ..... Two o'clock, or
After half-past Two o'clock,

shall draw a line noting such times; and members receiving tickets after three o'clock, or at any time on any subsequent day, shall mark the exact time at which they are received.

Members omitting to note the times thus fixed may become liable for losses occasioned by selling-out in case undue delay is proved under the provisions of Rule 99.

A member splitting a ticket shall pay any increased expense caused by such splitting, and shall retain the original ticket. Split tickets must bear the name of the issuer of the original ticket.

No claim for loss on split tickets shall be valid unless made within three months after the delivery of the stock.

A member failing to keep the original ticket will be required to trace it in case of selling-out.

On ticket-days the passing of tickets shall commence at ten o'clock. Tickets may be left at the office of the seller up to half-past one o'clock on ticket-days.

Tickets may be issued and passed on the day before the ticket-day, but the buying-in upon tickets so issued shall not be allowed until the eleventh day after the ticket-day.

91. When shares have been converted into consolidated stock and are so quoted in the official list, buyers are required to pass tickets for stock, and not for shares.

92. A member not refusing an antedated ticket, when tendered as such, takes it with all its liabilities; but if it be passed as an ordinary ticket, the liabilities remain with the member putting such ticket again into circulation; and any member holding an undated ticket shall not be liable for any loss arising from the shares or stock having been bought in, unless such ticket has been seven days in his possession.

93. A member who makes an alteration in, or improperly detains a ticket, shall make good any loss that may occur thereby.

94. The deliverer shall cause the shares or stock to be transferred at the price marked upon the ticket; but no member shall be compelled to take a ticket at a price not quoted in the official list during the account, unless the bargain represented by such ticket shall have been made within the two preceding accounts.

95. The deliverer may, previously to delivery, pay any call made on registered shares, although not due, and claim the amount of the issuer of the ticket.

96. The buyer of shares or stock shall pay the *ad valorem* duty and registration fee, and shall state on the ticket the amounts in which he may desire to have the shares or stock transferred (provided no such amounts require a higher stamp than 50*l.*).

In cases of loans the borrower shall pay the nominal consideration stamps of ten shillings, the registration fees, and the mortgage stamp.

97. The buyer shall, in the event of his ticket being split, pay for any portion of shares or stock which may be presented, provided the number be not less than ten shares, or the value less than 200*l.*

98. The buyer of shares or stock may refuse to pay for a transfer deed unaccompanied by coupons or certificates, unless it be officially certified thereon that the coupons or certificates are at the office of the company. But if the transfer deed be perfect in all other respects, the shares or stock must not be bought in until reasonable time has been allowed to the seller to obtain the verification required. If the seller have a larger coupon than the amount of stock conveyed, or only one coupon representing stock conveyed by two or more transfer deeds, the coupon may be deposited with the Secretary of the Share and Loan Department of the Stock Exchange, who shall forward it to the office of the company, and certify to that effect on the transfer deeds, which shall then be a valid delivery. No person is to look to the managers or Committee of the Stock Exchange, as being liable for the due or accurate performance of those duties, the managers and Committee holding themselves, and being held, entirely irresponsible in respect of the execution, or of any mis-execution, or non-execution, of the duties in question.

99. The deliverer of shares or stock who shall not receive a ticket by half-past two o'clock on the ticket-day, may sell out such securities up to three o'clock. If a ticket shall not have been regularly issued before twelve o'clock, the issuer thereof shall be responsible for any loss occasioned by such selling out. Should, however, a ticket have been regularly put into circulation, the holder thereof at two o'clock shall be responsible for any selling out on the ticket-day. If the selling out take place on the next day, the holder of the ticket at three o'clock on the ticket-day shall be liable;—*unless such*

ticket was in the settlement department at three o'clock, in which case the holder of such ticket at four o'clock shall be liable. In case of selling out on any subsequent day, the holder of the ticket at three o'clock on the previous day, or at one o'clock on Saturdays, shall be liable, unless he can prove undue delay in passing the ticket. Should the deliverer allow two clear days to elapse without availing himself of his right to sell out, his buyer shall be released from all loss in cases where the ticket has not been passed in consequence of the public declaration of any member as a defaulter. If a seller does not deliver shares or stock within thirteen clear days, the intermediate buyer from whom he received the ticket shall be released, and the issuer thereof shall alone remain responsible for the payment of the purchase-money.

100. When shares or stock are sold out, if a ticket be not given within half-an-hour after the time of sale, the transfer may be made into the name of the buyer.

101. If shares or stock are not delivered within ten days the issuer of the ticket may buy in the same against the seller at, or after, twelve o'clock on the eleventh day after the date of the ticket, or on any subsequent day.

One hour's public notice of such buying-in must be posted in the Stock Exchange, and the purchase must be made, or attempted, within half-an-hour after the expiration of the time fixed. The name into which the shares or stock are to be transferred must be stated in the order to buy in. The loss occasioned by such buying-in shall be borne by the ultimate seller, unless he can prove that there has been undue delay in the passing of the ticket on the part of any member, who shall in that case be liable.

Shares or stock thus bought-in and not delivered by one o'clock on the following day, or by twelve o'clock on Saturdays, may be re-purchased for immediate delivery without further notice, and any loss shall be paid by the member causing such re-purchase.

102. The issuer of a ticket who shall allow thirteen clear days from the date of his ticket to elapse without buying-in or attempting to buy in shares or stock, shall release his seller from all liability in respect of the non-delivery of the securities, unless he shall have waived his right to buy in at the request, or with the consent of his seller; and the holder of the ticket shall alone remain responsible to such issuer for the delivery of the securities.

103. The buyer is entitled to new shares or stock issued in right of old, provided that, within reasonable time, he specially claim the same, in writing, from the seller. Claims should be entered as bargains, and as such be checked in the usual manner.

When practicable, claims are required to be settled by letters of renunciation, but if not practicable, and there be sufficient time for registration, the seller may, after due notice, require the buyer to complete the bargain in old shares or stock.

If the new shares or stock cannot be obtained by letters of renunciation, or by the transfer of the old, the Committee will fix a price at which the same shall be temporarily settled, and which amount may be deducted by the buyer from the purchase-money of the old shares or stock, until the special settlement.

The Committee will not entertain any dispute relating to unchecked

claims, unless brought before them within ten days after the special settling-day.

104. On the day before the ticket-day, and on the ticket-day, the Clerk of the House shall, at twelve o'clock, fix the making-up prices by taking the then actual market prices, and no making up shall be binding, unless at such fixed prices. In case of dispute as to the making-up price, or of any omission in fixing the same, the Clerk of the House shall act upon the decision of two members of the Committee.

105. On the morning of the settling-day all unsettled bargains shall be brought down and temporarily adjusted at the making-up price of the ticket-day, except bargains in stocks and shares, subject to arrangement by the settlement department, which shall be brought down and temporarily adjusted at the making-up price of the day before the ticket-day.

106. No member shall be required to pay for shares or stock presented after half-past two o'clock; or after one o'clock on Saturdays.

Rules applicable to Securities to Bearer.

107. Bargains, when no time is specified, shall be considered as made for the existing account; but those made *on a ticket-day*, or on a settling-day, shall, unless otherwise specified, be for the ensuing account.

108. The Committee will not recognise any bargain effected for a period beyond the end of the ensuing two accounts.

109. An offer to buy or sell a sum of stock, at a price named, is binding as to any part thereof, not less than the under-mentioned sums, and divisible by the same, viz.,—

£1,000 stock or scrip.
Fcs. 750 French rentes.
10 shares.

110. No member shall be required to accept the delivery of a certificate of American shares of a larger amount than 10 shares of $100 each nominal capital, or 20 shares of $50 each, nor an American bond of a larger amount than $1,000, except upon special contract.

111. The seller of securities for a particular day, which the buyer is not prepared to pay for by half-past two o'clock on that day (or half-past twelve o'clock on Saturdays), may sell out the same, and claim of the buyer any loss incurred.

112. On the ticket-day between ten and three o'clock, tickets shall be passed without any price thereon, and the accounts made up therewith are to be settled at the making-up price of the day.

Tickets must bear distinctive numbers and be for the following amounts, viz.:—

£1,000 stock, or multiples of £1,000 up to £5,000.
£1,000 Italian stock or multiples thereof up to £5,000. Also £800, or multiples thereof up to £4,800.
$5,000 American stocks, or multiples thereof up to $25,000.
Fcs. 1,500 French 3 per cent. rentes, or multiples thereof up to fcs. 6,000.
10 shares, or multiples thereof up to 100.

Tickets for £500 stock may be passed for bargains, or balances of that amount.

Smaller amounts must be settled without tickets.

Tickets shall not be issued later than two o'clock on the ticket-day.

Tickets shall not be split, except in the settlement department in cases where the sub-Committee appointed to control that department may consider it necessary.

Every member is required to endorse on the ticket the name of the member to whom it is passed.

Tickets may be left at the office of the seller up to half-past two o'clock on ticket-days.

On the settling-day, and on the day after the settling-day, the delivery of securities shall commence at ten o'clock.

Sellers shall accept tickets, and if they elect to settle with their immediate buyers under the provisions of Rule 67, they shall deliver their securities before half-past twelve o'clock.

The holder of tickets may deliver securities up to half-past one o'clock on settling-days.

A member electing to take securities from his immediate seller must give notice thereof before twelve o'clock on the ticket-day, in which case he shall be required to pay up to two o'clock on the settling day. Members neglecting to give such notice shall be required to pay up to half-past two o'clock.

Buyers shall pay for such portion of securities as may be delivered within the prescribed times.

113. A member shall be required to pay for securities presented until half-past two o'clock on any day other than settling-days. On Saturdays, he shall not be required to pay for securities after one o'clock.

114. Securities bought for any period, except the settling-day, which shall not be delivered by half-past two o'clock or by half-past twelve o'clock on Saturdays, may be bought-in on the same or any subsequent day, and any loss occasioned by such re-purchase, shall be borne by the seller.

But securities bought for the settling-day, and not delivered by half-past two o'clock, may be bought-in on the following, or any subsequent day, after one hour's notice to be posted in the foreign market, announcing the intended purchase. The buying-in not to take place before two o'clock, nor before half-past twelve o'clock on Saturdays, in which case, the loss shall be borne by the member who shall not have delivered the shares or stock, by half-past two o'clock on the previous day, or by one o'clock on Saturdays.

Stock thus bought-in, and not delivered by one o'clock on the following day, or by twelve o'clock on Saturdays, may be re-purchased for immediate delivery without further notice, and any loss shall be paid by the members causing such re-purchase.

A member neglecting to take the numbers of securities delivered after time, shall be required to trace out the member responsible for the loss.

115. A member who shall allow two clear days to elapse without availing himself of his right to buy in, or without attempting to buy in securities, releases the seller from any loss in consequence of the public declaration of any member as a defaulter, unless he shall have

waived such right at the request, or with the consent, of the seller. The holder of a ticket who shall allow two clear days to elapse without delivering the stock releases his buyer from any loss in consequence of the declaration of any member as a defaulter.

116. The Clerk of the House shall, at twelve o'clock on each of the two days preceding each settling, fix the making-up prices of all securities by taking the then actual market prices; and no making-up shall be binding unless at such fixed prices.

117. On settling days, all unsettled bargains shall be brought down and temporarily adjusted, at prices to be fixed by the Clerk of the House at half-past two o'clock, and the differences shall be paid in the usual manner.

118. Bargains in exchequer bills are for bills not filled up to order.

119. Bargains in French rentes, unless otherwise specified, shall be settled in certificates to bearer, and at a fixed exchange of 25 fcs. per pound sterling.

120. Foreign coupons sold at the exchange of the day, and not paid, are returnable with all reasonable expenses.

121. The buyer of bonds or other securities subject to periodical drawing, shall not be entitled to claim delivery thereof previous to the day for which they were bought.

Bargains must be settled in securities which have not been drawn. In case of the erroneous delivery of any drawn securities, the buyer (on receipt of undrawn securities, and on allowance being made for any drawing or dividend of which he may have lost the benefit) shall deliver such securities back to the person who held them at the time of the drawing, or shall pay to him any proceeds received from such drawing, provided the said securities, or the proceeds thereof, be traced to, and remain in the possession, and under the control, of such buyer, all intermediate members being released from liability.

No claim in respect of the erroneous delivery of drawn securities will be entertained by the Committee, unless made within nine calendar months.

122. The buyer is entitled to new securities issued in right of old, provided that within reasonable time, he specially claim the same in writing from the seller, who may after due notice require the buyer to complete the bargain in old securities. Claims should be entered as bargains, and as such be checked in the usual manner.

The Committee will fix a price for the new securities, which may be deducted by the buyer from the purchase-money of the old securities, until the special settlement.

The Committee will not entertain any dispute relating to unchecked claims, unless brought before them within ten days after the special settling-day.

123. The deliverer is responsible for the genuineness of securities delivered, and in case of his death, failure, or retirement from the Stock Exchange, such responsibility shall attach to each member in succession, through whose account the ticket for such securities shall have passed.

124. Every bond or scrip share is to be considered perfect, unless it be much torn or damaged, or a material part of the wording be obliterated. The Committee will not take cognizance of any complaint in respect of bonds or shares alleged to have been delivered in

a damaged condition, or deficient in, or with irregular coupons, should such bonds or shares be detained by the buyer more than eight days after the delivery, unless it can be proved that the member passing them was aware of their being imperfect.

125. Bonds and debentures of railways in Great Britain, Ireland, and the East Indies, shall be dealt in so that the accrued interest, up to the day for which the bargain was done, be paid by the buyer: but bargains in bonds and debentures of colonial and foreign railways shall include the accrued interest in the price.

Special Settling Days and Official Quotation of New Loans, Shares, and Stocks.

126. Bargains in the scrip of a new loan, or the shares of a new company, are contingent on the appointment of a special settling-day.

127. The Committee will appoint a special settling-day for transactions in the scrip of a new loan, provided the requisite documents are in due order, that the issue is not in contravention of Rules 61 and 62, and that no allegation of fraud is substantiated.

The application for a special settling-day for bargains in foreign, colonial, or other loans, must be laid before the Secretary of the Share and Loan Department, who shall give three clear days' public notice previously to its being considered by the Committee.

The application must be accompanied by the prospectus, by notarial copies, or translations, or other satisfactory evidence of the powers under which the loan is contracted, and by a certificate verified by the statutory declaration of the contractors or agents of the amount allotted to the public, that the scrip or bonds are ready for delivery, and are in reasonable amounts.

The Committee may order the quotation of the scrip and bonds of a foreign, colonial, or other loan, the dividends of which are payable in this country, provided such loan has been publicly negociated by tender, contract or otherwise, and provided the bonds specify the amount and conditions of the loan, the powers under which it has been contracted, and the numbers and denominations of the bonds issued, and bear the autographic signature of the contractor or properly authorized agent.

Bonds will not be admitted to quotation until they have been approved by the Committee.

Bonds, the dividends of which are payable abroad, may be quoted upon satisfactory proof of the amount created, and of the official quotation in the country where issued.

128. Bargains in foreign loans, which are officially quoted in the country to which they belong, shall be for the ordinary settlements.

129. The Committee will appoint a special settling-day for transactions in the shares of a new company, provided that no allegation of fraud be substantiated; that there has been no misrepresentation or suppression of material facts; that sufficient scrip or shares are ready for delivery, and that no impediment exists to the settlement of the account.

130. The Secretary to the Share and Loan Department shall give one week's notice to the Stock Exchange of any application for a special settling-day for transactions in the shares of a new company, pre-

viously to such application being submitted to the Committee, and shall require the production of the following documents, viz.:—

The prospectus, the act of parliament, the articles of association, or a certificate that the company is constituted upon the cost-book system, under the Stannary Laws.

The original applications for shares, the allotment book signed by the chairman and secretary to the company, and a certificate verified by the statutory declaration of the chairman and the secretary, stating the number of shares applied for, and unconditionally allotted to the public, the amount of deposits paid thereon, and that such deposits are absolutely free from any lien.

The banker's pass book, and a certificate from the bankers, stating the amount of deposits received.

131. The Committee may order the quotation of a new company in the official list, provided that the company is of *bonâ fide* character, and of sufficient magnitude and importance; that the requirements of Rule 130 have been complied with, and that the prospectus has been publicly advertised, and agrees substantially with the act of parliament, or the articles of association, and in the case of limited companies contains the memorandum of association; that it provides for the issue of not less than one-half of the nominal capital, and for the payment of ten per cent. upon the amount subscribed, and sets forth the arrangements for raising the capital, whether by shares fully or partly paid up, with the amounts of each respectively, and also states the amount paid or to be paid, in money or otherwise, to concessionaires, owners of property, or others on the formation of the company, or to contractors for works to be executed, and the number of shares, if any, proposed to be conditionally allotted;

That two-thirds of the whole nominal capital proposed to be issued have been applied for and unconditionally allotted to the public (shares reserved or granted in lieu of money payments to concessionaires, owners of property, or others, not being considered to form part of such public allotment), that the articles of association restrain the directors from employing the funds of the company in the purchase of its own shares, and that a member of the Stock Exchange is authorized by the company to give full information as to the formation of the undertaking, and be able to furnish the Committee with all particulars they may require.

In cases where fully paid shares have been granted in lieu of money payments, an official certificate will be required that the contract providing for the issue of such shares has been filed with the registrar of joint stock companies, as prescribed by the 25th section of the Companies' Amendment Act, 1867.

Foreign companies partly subscribed for and allotted in this country, shall not, unless under special circumstances, be allowed a quotation in the official list, until they have been officially quoted in the country to which they belong.

132. A company issuing, or promising to issue, new shares within twelve months after the first settling-day appointed by the Committee, unless under special circumstances, shall be liable to exclusion from the official list.

133. The Committee particularly caution brokers against giving

the sanction of their names to the bringing out of any company without due enquiry as to the *bona fides* of its objects, the character of its promoters, directors and concessionaires, and of the other persons connected therewith. Members disregarding this caution are liable to be dealt with in such manner as the case may require.

ORDINARY SETTLING-DAYS AND OFFICIAL QUOTATION OF PRICES.

134. The Committee shall fix the settling-day for English stock, at least eight days previous to the settlement of the pending account, and at their first meeting in each month they shall fix the ticket-days and settling-days for foreign stock, shares, &c., for the succeeding month.

The secretary shall give notice of the days thus appointed.

135. The settling-day in English omnium and scrip shall be two days prior to the respective days of payment of each of the several instalments, unless the payment falls on a Tuesday, in which case the settling-day shall be on the previous Monday.

In case the payment of an instalment on foreign or other scrip falls on a settling-day, the settlement of such scrip shall take place the day previous to the payment.

136. A list of prices of English and foreign stocks, shares and other securities, permitted to be quoted, shall be published under the authority of the Committee; and no list shall be published and sold by a member without the sanction of the Committee.

137. The prices of all bargains may be quoted in the official list, but no price shall be inserted unless the bargain shall have been made in the Stock Exchange between members at the market price; nor on the authority of one of them, if he refuse, when required by a member of the Committee to give up the name of the member with whom he has dealt.

138. Bargains at special prices by reason of their exceptional amounts may only be quoted with distinguishing marks.

139. Bargains in English stock for the next transfer day, or in foreign or other stocks for the following day, may be marked in the official list of money prices.

Bargains in all stocks made during the shutting, for the opening, may be quoted in the official list.

Bargains in foreign bonds may be quoted in the official list, with or without overdue coupons.

Omnium may be quoted for the issue of the receipts, for money, and for the next succeeding payment.

140. All dealings in English stock (except bank stock), and in India 4 and 5 per cents., for any day subsequent to the striking of the balances of such stocks for dividend, shall be ex dividend, and quoted accordingly.

141. Bargains in transferable shares or stock shall be quoted ex interest from the beginning of the account in which the interest may become payable; and ex dividend from the beginning of the account following that in which the dividend may have been declared, provided the dividend be made payable to the holders then registered; but in case of a subsequent shutting of a company's books for payment of the dividend, then from the beginning of the account following that in which such shutting occurs.

Bargains in securities to bearer shall be quoted ex dividend on the day when the dividend is payable.

Shares in foreign railways shall, when practicable, be quoted ex dividend, or ex interest, at a period in accordance with the practice of foreign bourses.

142. Bargains should be quoted in the order in which they are made; but the clerks of the House may, with the concurrence of a member of the Committee, quote omitted bargains, if notified before one o'clock, in the order in which they occurred, upon a written application from the buyer and the seller, stating the amount, the time when, and the price at which, such bargains were made; and such application shall be filed, and laid before the Committee at their next meeting. The above regulation applies likewise to all bargains done between one and three o'clock.

143. A price inserted in the official list shall not be expunged, without the authority of the chairman, deputy-chairman, or two members of the Committee.

FAILURES.

144. A member unable to fulfil his engagements, shall be publicly declared a defaulter by direction of the chairman, deputy chairman, or any two members of the Committee.

145. A member declared a defaulter in the Stock Exchange, or a member who may become a bankrupt, or be proved to be insolvent, although he may not be at the same time a defaulter in the Stock Exchange, ceases to be a member.

146. When a member shall give private intimation to his creditors of his inability to fulfil his engagements, the creditors shall not make any compromise with such defaulter, but shall immediately communicate with the chairman, deputy chairman or two members of the Committee, in order that the member in default may be immediately declared; and in case the Committee shall obtain knowledge of any private failure, the name of the defaulter shall be publicly declared.

147. A member conniving at a private failure, by accepting less than the full amount of his debt, shall be liable to refund any money or securities received from such defaulter, provided he shall be declared within two years from the time of such compromise, the property so refunded being applied to liquidate the claims of the subsequent creditors. Any arrangement for settlement of claims, in lieu of *bonâ fide* money payment on the day when such claims become due, shall be considered as a compromise, subject to the provisions of this rule.

148. A member who shall have received a difference on an account, prior to the regular day for settling the same, or who shall have received a consideration for any prospective advantage, whether by a direct payment of money, or by the purchase or sale of stock at a price either above or below the market price at the time the bargain was contracted, or by any other means, prior to the day for settling the transaction for which the consideration was received, shall (in case of the failure of the member from whom he received such difference or consideration) refund the same for the general benefit of the creditors; and any member who shall have, under the circumstances above stated, paid or given such difference or consideration, shall again

pay the same to the creditors; so that, in each case, all persons may stand in the same situation with respect to the creditors, as if no such prior settlement or other arrangement had taken place.

149. A creditor receiving, under any circumstances, a larger proportion of differences on a defaulter's estate than that to which each of the creditors is entitled, shall refund such portion as shall reduce his dividend to an equality with the others.

150. Creditors for differences shall have a prior claim on all differences received by, or due to, a defaulter's estate.

151. Members not receiving due payment for securities delivered on the day of default, are entitled, so far as regards the value thereof, at the average price on the day of delivery, to be paid *pro ratâ*, and preferentially, out of assets resulting in any manner from such securities, or derived from the defaulter's own resources; and, should these prove insufficient, they shall, as to the balance of such claims, participate with other creditors in any surety-money of the defaulter.

152. In the case of loans of money made upon securities valued at less than the market-price, the lender shall realize his securities within three clear days (unless the creditors consent to a longer delay), or take them at a price to be fixed by the official assignees, with appeal to any two members of the Committee. Should the security be insufficient, the difference may be proved against the defaulter's estate.

153. No loan without security shall be admitted as a claim on the differences of a defaulter's estate; nor shall any such loan, when of longer duration than two business days, be admitted as a claim on any other of his assets; and should any unsecured creditor receive payment of his loan from a member on the day of his default, such payment being made out of assets not belonging to the defaulter previously to that day, he shall refund the amount so received for the benefit of the defaulter's estate.

154. Differences allowed to remain unpaid for more than two business days beyond the day on which they become due, cannot be proved against a defaulter's estate, or set off against any difference due to a defaulter at the time of his failure. Differences overdue and paid previous to the day of default are not to be refunded.

155. The Committee will not recognize any claim on a defaulter's account that does not arise from a Stock Exchange transaction.

156. No defaulter shall be re-admitted, who shall not, if required, give up the name of any principal indebted to him, or who, within fourteen days from the date of his failure, shall not have delivered to the official assignees, or to his creditors, his original books and accounts, and a statement of the sums owing to, and by him, in the Stock Exchange, at the time of his failure.

157. A member, having compounded with his creditors, and being subsequently declared a defaulter, shall not be eligible for re-admission for six months, and should he be declared in consequence of his having so compounded, his securities shall not be called upon to pay their security-money.

158. A defaulter shall not be eligible for re-admission, who shall not have paid from his own resources, independently of his security-money, at least one-third of the balance of any loss that may occur on his transactions, whether on his own account or that of principals;

or who, in the event of his debts being less than the amount which his sureties may be called upon to pay, shall not have refunded to the sureties one-third of the amount paid by them.

159. A member who passes or retains a ticket for shares or stock, whereby loss is incurred or increased, and who shall be declared a defaulter in that account, shall not be eligible for re-admission for at least one year from the date of such default, provided it be proved to the satisfaction of the Committee that he knew himself to be insolvent at the time of passing or retaining the ticket.

160. No member shall carry on business for a defaulter for his benefit, without the consent of the creditors, and the sanction of the Committee. No member shall deal with a defaulter on his own account before his re-admission to the Stock Exchange.

161. No member shall transact business for a principal who, to his knowledge is in default to another member, unless such person shall have made a satisfactory arrangement with his creditors.

162. Non-members shall be allowed to participate in defaulters' estates, provided their claims be admitted by the creditors, or, in case of dispute, by the Committee; and a person whose claim is so admitted, may be represented at the meeting of creditors by any member whom he may select.

163. No member, being a creditor upon a defaulter's estate, shall sell, assign, or pledge his claim on such estate, to a non-member, without the concurrence of the Committee; and such assignment shall be immediately communicated to the official assignees.

164. If a creditor of a defaulter be dead, the dividend due to him shall be paid to his legal representative; but if the creditor himself be a defaulter, the dividend due to him shall be paid to his creditors.

165. Upon any application for the re-admission of a defaulter, a Sub-Committee of not more than three members, to be chosen in alphabetical rotation, shall investigate his conduct and accounts; and no further proceedings shall be taken by the Committtee with regard to his re-admission, until the report of such Sub-Committee shall have been submitted, together with a balance-sheet of the defaulter's estate, signed by himself.

The attention of the Sub-Committee shall be directed,

1st,—To ascertain the amount of the greatest balance of shares or stock open at any time during the account, the current balance at his bankers, as well as the balance of shares or stock open at the time of failure; and whether the transactions were on his own account, or on account of principals, specifying the amount of each respectively.

2nd,—To ascertain the total amount of money paid by him; specifying the sums collected in the Stock Exchange; and those received from principals; and the money or other property brought forward by himself.

3rd,—To ascertain the conduct of the defaulter preceding and subsequent to his failure; and to enquire of the official assignees whether any matter, prejudicial or otherwise to the defaulter's application, has transpired at any meeting of creditors, or has officially come to their knowledge elsewhere.

4th,—To ascertain whether the defaulter has violated Rule 159.

166. The re-admission of defaulters shall be in two distinct classes:—

The *first* class to be for cases of failure arising from the default of principals, or from other circumstances, where no bad faith, nor breach of the regulations of the House has been practised; where the operations have been in reasonable proportion to the defaulter's means or resources; and where his general conduct has been irreproachable.

The *second* class, for cases marked by indiscretion, and by the absence of reasonable caution.

The decision of the Committee on the re-admission of a defaulter shall remain posted in the Stock Exchange for thirty days.

167. Every defaulter, bankrupt or insolvent (applying for re-admission) shall furnish the sub-Committee with every information they may require.

Official Assignees.

168. Two or more members shall be appointed annually by the Committee, to act as official assignees, whose duty it shall be to obtain from a defaulter his original books of account, and a statement of the sums owing to and by him, to attend meetings of creditors, to summon the defaulter before such meetings; to enter into a strict examination of every account; to investigate any bargains suspected to have been effected at unfair prices; and to manage the estate in conformity with the rules, regulations and usages of the Stock Exchange.

169. Each official assignee shall find security amounting to 1,000*l.* from two or more members of the Stock Exchange. In the event of any default or misappropriation by either assignee of funds or property entrusted to his care, or of any other act of dishonesty on his part, each of his sureties shall pay, under direction of the Committee, such sum as he shall have guaranteed.

170. The assignees shall collect and pay the assets to the credit of their joint account at a banker's, and shall distribute the same as soon as possible.

171. In every case of failure, the official assignee shall publicly fix the prices current in the market immediately before the declaration, at which prices all persons having accounts open with the defaulter shall close their transactions by buying of or selling to him such stocks, shares, or other securities as he may have contracted to take or deliver, the differences arising from the defaulter's transactions being paid to, or claimed from the official assignees. In the event of a dispute as to the prices named, they shall be fixed by two members of the Committee.

172. The official assignees shall not claim differences on a defaulter's estate, until they become due.

173. The official assignees shall not admit any claim upon a defaulter's estate for differences arising out of transactions, which are specially stated in the laws of the Committee as not sanctioned, or not recognised.

174. Once in every month, the official assignees shall lay before the Committee an account of the balances in their hands belonging to defaulters' estates, and the Committee shall order such balances as

they think fit to be paid over to the account of the trustees of the Stock Exchange Benevolent Fund, subject to recall by the Committee for distribution amongst creditors, or for payments by or to the official assignees which have been authorized by the Committee.

A statement of all sums so paid over, and of the amount remaining in the hands of the trustees of the Stock Exchange Benevolent Fund on the 31st of December in every year, shall be furnished by the official assignees, and deposited in the Committee Room, for the inspection of the members of the Stock Exchange.

On the first of March, in each year, the official assignees shall lay before the Committee, a statement of all dividends paid during the last year on each defaulter's estate.

Every defaulter's estate shall be registered in a book, to be kept by the official assignees.

175. The scale of remuneration to the official assignees shall be as follows:—

From £1 to £1,000 collected.....5 per cent.
From £1,000 to £5,000 .....2 per cent.
From £5,000 .....1 per cent.

Sums received from another defaulter's estate and redistributed shall be charged with half the above per-centages, and where exceptional duties have been performed by the official assignees, or where amounts have been collected arising from stock delivered to a defaulter and not duly paid for by him, special allowances shall be made by the trustees of such defaulter's estate.

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N.B.—*The figures with parentheses refer to the numbers of the Rules in the Appendix—the others to the pages of the Text.*

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